Albuquerque Housing Authority

Administration Plan

Revised November 2022

ALBUQUERQUE HOUSING AUTHORITY

"Empowering people in our community through affordable housing and self sufficiency opportunities."

1840 University Boulevard SE
Albuquerque, NM 87106
Phone: (505) 764-3920
Fax: (505) 764-3981
www.abqha.org

Copyright 2021by Nan McKay & Associates, Inc.

All rights reserved

Permission to reprint granted only to the Public Housing Authority that has purchased this plan from Nan McKay & Associates, Inc. This document may not be reprinted or distributed to any other person or entity other than the purchasing agency without the express written permission of Nan McKay & Associates, Inc.

Contents

INTRODUCTION 19
Chapter 1 - OVERVIEW OF THE PROGRAM & PLAN 21
INTRODUCTION 21
PART I: THE AHA 22
1-I.A. OVERVIEW 22
1-I.B. ORGANIZATION & STRUCTURE OF THE PHA 22
1-I.C. AHA MISSION 23
1-I.D. THE AHA'S PROGRAMS 23
1-I.E. THE AHA'S COMMITMENT TO ETHICS & SERVICE 23
PART II: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM 24
1-II.A. OVERVIEW & HISTORY OF THE PROGRAM 24
1-II.B. HCV PROGRAM BASICS 25
1-II.C. THE HCV PARTNERSHIPS 26
1-II.D. APPLICABLE REGULATIONS 29
PART III: THE HCV ADMINISTRATIVE PLAN 29
1-III.A. OVERVIEW & PURPOSE OF THE PLAN 29
1-III.B. CONTENTS OF THE PLAN 30
1-III.C. ORGANIZATION OF THE PLAN 31
1-III.D. UPDATING & REVISING THE PLAN 32
Chapter 2 – FAIR HOUSING & EQUAL OPPORTUNITY 33
INTRODUCTION 33
PART I: NONDISCRIMINATION 33
2-I.A. OVERVIEW 33
2-I.B. NONDISCRIMINATION 34
PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES 36
2-II.A. OVERVIEW 36
2-II.B. DEFINITION OF REASONABLE ACCOMMODATION 36
2-II.C. REQUEST FOR AN ACCOMMODATION 37
2-II.D. VERIFICATION OF DISABILITY 37
2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION 38
2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS 39
2-II.G. PHYSICAL ACCESSIBILITY 40
2-II.H. DENIAL OR TERMINATION OF ASSISTANCE 41

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP) 41
2-III.A. OVERVIEW....41
2-III.B. ORAL INTERPRETATION 42
2-III.C. WRITTEN TRANSLATION....42
2-III.D. IMPLEMENTATION PLAN 43
EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS 43
EXHIBIT 2-2: LIMITED ENGLISH PROFICIENCY PLAN 44
Chapter 3 – ELIGIBILITY....47
INTRODUCTION....47
PART I: DEFINITIONS OF FAMILY & HOUSEHOLD MEMBERS 47
3-I.A. OVERVIEW....47
3-I.B. FAMILY & HOUSEHOLD 48
3-I.C. FAMILY BREAKUP & REMAINING MEMBER OF TENANT FAMILY 48
3-I.D. HEAD OF HOUSEHOLD....49
3-I.E. SPOUSE, COHEAD, & OTHER ADULT 50
3-I.F. DEPENDENT 50
3-I.G. FULL-TIME STUDENT....51
3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, & ELDERLY FAMILY....51
3-I.I. PERSONS WITH DISABILITIES & DISABLED FAMILY 52
3-I.J. GUESTS....52
3-I.K. FOSTER CHILDREN & FOSTER ADULTS 53
3-I.L. ABSENT FAMILY MEMBERS....53
3-I.M. LIVE-IN AIDE 54
PART II: BASIC ELIGIBILITY CRITERIA 55
3-II.A. INCOME ELIGIBILITY & TARGETING....55
3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS....57
3-II.C. SOCIAL SECURITY NUMBERS 59
3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION....60
3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION 60
3-II.F. EIV SYSTEM SEARCHES 64
PART III: DENIAL OF ASSISTANCE....65
3-III.A. OVERVIEW....65
3-III.B. MANDATORY DENIAL OF ASSISTANCE....66

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE 67
3-III.D. SCREENING 69
3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE....71
3-III.F. NOTICE OF ELIGIBILITY OR DENIAL....73
3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, & STALKING 74
EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES 75
EXHIBIT 3-2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION....77
Chapter 4 – APPLICATIONS, LOTTERY PROCESS & TENANT SELECTION....82
INTRODUCTION....82
PART I: THE APPLICATION PROCESS....83
4-I.A. OVERVIEW....83
4-I.B. APPLYING FOR ASSISTANCE....83
4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS....83
4-I.D. PLACEMENT ON THE WAITING LIST 84
PART II: MANAGING THE WAITLIST....85
4-II.A. OVERVIEW 85
4-II.B. ORGANIZATION OF THE WAITING LIST....85
4-II.C. OPENING & CLOSING THE WAITING LIST....86
4-II.D. FAMILY OUTREACH 87
4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES....88
4-II.F. UPDATING THE WAITING LIST 88
PART III: SELECTION FOR HCV ASSISTANCE....89
4-III.A. OVERVIEW....89
4-III.B. SELECTION & HCV FUNDING SOURCES 90
4-III.C. SELECTION METHOD....91
4-III.D. NOTIFICATION OF SELECTION....93
4-III.E. THE APPLICATION INTERVIEW....94
4-III.F. COMPLETING THE APPLICATION PROCESS....95
Chapter 5 – BRIEFINGS & VOUCHER ISSUANCE 97
INTRODUCTION....97
PART I: BRIEFINGS & FAMILY OBLIGATIONS....97
5-I.A. OVERVIEW....97
5-I.B. BRIEFING....97
5-I.C. FAMILY OBLIGATIONS.... 102

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: SUBSIDY STANDARDS & VOUCHER ISSUANCE 105
5-II.A. OVERVIEW 105
5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE 106
5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS 107
5-II.D. VOUCHER ISSUANCE 107
5-II.E. VOUCHER TERM & EXTENSIONS 108
Chapter 6 – INCOME & SUBSIDY DETERMINATIONS 111
INTRODUCTION 111
PART I: ANNUAL INCOME 111
6-I.A. OVERVIEW 111
6-I.B. HOUSEHOLD COMPOSITION & INCOME 112
6-I.C. ANTICIPATING ANNUAL INCOME 114
6-I.D. EARNED INCOME 116
6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES 119
6-I.F. BUSINESS INCOME 120
6-I.G. ASSETS 122
6-I.H. PERIODIC PAYMENTS 129
6-I.I. PAYMENTS IN LIEU OF EARNINGS 130
6-I.J. WELFARE ASSISTANCE 130
6-I.K. PERIODIC & DETERMINABLE ALLOWANCES 131
6-I.L. STUDENT FINANCIAL ASSISTANCE 132
6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME 133
PART II: ADJUSTED INCOME 136
6-II.A. INTRODUCTION 136
6-II.B. DEPENDENT DEDUCTION 137
6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION 137
6-II.D. MEDICAL EXPENSES DEDUCTION 137
6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION 138
6-II.F. CHILD CARE EXPENSE DEDUCTION 140
PART III: CALCULATING FAMILY SHARE & AHA SUBSIDY 143
6-III.A. OVERVIEW OF RENT & SUBSIDY CALCULATIONS 143
6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT 144
6-III.C. APPLYING PAYMENT STANDARDS 147
6-III.D. APPLYING UTILITY ALLOWANCES 149

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES 150
EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS 150
EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS 152
EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS 153
EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES 154
EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION 155
Chapter 7 – VERIFICATION 158
INTRODUCTION 158
PART I: GENERAL VERIFICATION REQUIREMENTS 158
7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION 158
7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS 159
7-I.C. UP-FRONT INCOME VERIFICATION (UIV) 160
7-I.D. THIRD-PARTY WRITTEN & ORAL VERIFICATION 162
7-I.E. SELF-CERTIFICATION 164
PART II: VERIFYING FAMILY INFORMATION 165
7-II.A. VERIFICATION OF LEGAL IDENTITY 165
7-II.B. SOCIAL SECURITY NUMBERS 165
7-II.C. DOCUMENTATION OF AGE 167
7-II.D. FAMILY RELATIONSHIPS 168
7-II.E. VERIFICATION OF STUDENT STATUS 169
7-II.F. DOCUMENTATION OF DISABILITY 170
7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS 171
7-II.H. VERIFICATION OF PREFERENCE STATUS 172
PART III: VERIFYING INCOME & ASSETS 173
7-III.A. EARNED INCOME 173
7-III.B. BUSINESS & SELF EMPLOYMENT INCOME 173
7-III.C. PERIODIC PAYMENTS & PAYMENTS IN LIEU OF EARNINGS 174
7-III.D. ALIMONY OR CHILD SUPPORT 174
7-III.E. ASSETS & INCOME FROM ASSETS 175
7-III.F. NET INCOME FROM RENTAL PROPERTY 176
7-III.G. RETIREMENT ACCOUNTS 176
7-III.H. INCOME FROM EXCLUDED SOURCES 176
7-III.I. ZERO ANNUAL INCOME STATUS 177
7-III.J. STUDENT FINANCIAL ASSISTANCE 177

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS 178
PART IV: VERIFYING MANDATORY DEDUCTIONS 179
7-IV.A. DEPENDENT & ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS 179
7-IV.B. MEDICAL EXPENSE DEDUCTION 179
7-IV.C. DISABILITY ASSISTANCE EXPENSES 180
7-IV.D. CHILD CARE EXPENSES 182
EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS 185
Chapter 8 – HOUSING QUALITY STANDARDS & RENT REASONABLENESS DETERMINATIONS 186
INTRODUCTION 186
PART I: PHYSICAL STANDARDS 186
8-I.A. GENERAL HUD REQUIREMENTS 186
8-I.B. ADDITIONAL LOCAL REQUIREMENTS 188
8-I.C. LIFE-THREATENING CONDITIONS 189
8-I.D. OWNER & FAMILY RESPONSIBILITIES 190
8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL 190
8-I.F. VIOLATION OF HQS SPACE STANDARDS 191
PART II: THE INSPECTION PROCESS 191
8-II.A. OVERVIEW 191
8-II.B. INITIAL HQS INSPECTION 193
8-II.C. BIENNIAL HQS INSPECTIONS 194
8-II.D. SPECIAL INSPECTIONS 195
8-II.E. QUALITY CONTROL INSPECTIONS 195
8-II.F. INSPECTION RESULTS & REINSPECTIONS FOR UNITS UNDER HAP CONTRACT 196
8-II.G. ENFORCING OWNER COMPLIANCE 197
8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS 198
PART III: RENT REASONABLENESS 198
8-III.A. OVERVIEW 198
8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED 199
8-III.C. HOW COMPARABILITY IS ESTABLISHED 200
8-III.D. AHA RENT REASONABLENESS METHODOLOGY 201
EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS 203

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY 206
Chapter 9 – GENERAL LEASING POLICIES 208
INTRODUCTION 208
9-I.A. TENANT SCREENING 208
9-I.B. REQUESTING TENANCY APPROVAL 209
9-I.C. OWNER PARTICIPATION 210
9-I.D. ELIGIBLE UNITS 210
9-I.E. LEASE & TENANCY ADDENDUM 212
9-I.F. TENANCY APPROVAL 215
9-I.G. HAP CONTRACT EXECUTION 216
9-I.H. CHANGES IN LEASE OR RENT 217
Chapter 10 – MOVING WITH CONTINUED ASSISTANCE & PORTABILITY 219
INTRODUCTION 219
PART I: MOVING WITH CONTINUED ASSISTANCE 219
10-I.A. ALLOWABLE MOVES 219
10-I.B. RESTRICTIONS ON MOVES 220
10-I.C. MOVING PROCESS 222
PART II: PORTABILITY 223
10-II.A. OVERVIEW 223
10-II.B. INITIAL PHA ROLE 224
10-II.C. RECEIVING PHA ROLE 230
Chapter 11 – REEXAMINATIONS 237
INTRODUCTION 237
PART I: ANNUAL REEXAMINATIONS 237
11-I.A. OVERVIEW 237
11-I.B STREAMLINED ANNUAL REEXAMINATIONS 237
11-I.C. SCHEDULING ANNUAL REEXAMINATIONS 238
11-I.D. CONDUCTING ANNUAL REEXAMINATIONS 239
11-I.E. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS 241
11-I.F. EFFECTIVE DATES 241
PART II: INTERIM REEXAMINATIONS 242
11-II.A. OVERVIEW 242
11-II.B. CHANGES IN FAMILY & HOUSEHOLD COMPOSITION 243
11-II.C. CHANGES AFFECTING INCOME OR EXPENSES 244

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

11-II.D. PROCESSING THE INTERIM REEXAMINATION 246
PART III: RECALCULATING FAMILY SHARE & SUBSIDY AMOUNT 247
11-III.A. OVERVIEW 247
11-III.B. CHANGES IN PAYMENT STANDARDS & UTILITY ALLOWANCES 247
11-III.C. NOTIFICATION OF NEW FAMILY SHARE & HAP AMOUNT 249
11-III.D. DISCREPANCIES 249
Chapter 12 – TERMINATION OF ASSISTANCE & TENANCY 250
PART I: GROUNDS FOR TERMINATION OF ASSISTANCE 250
12-I.A. OVERVIEW 250
12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE 250
12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE 251
12-I.D. MANDATORY TERMINATION OF ASSISTANCE 251
12-I.E. MANDATORY POLICIES & OTHER AUTHORIZED TERMINATIONS 253
PART II: APPROACH TO TERMINATION OF ASSISTANCE 256
12-II.A. OVERVIEW 256
12-II.B. METHOD OF TERMINATION 256
12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE 257
12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE 257
12-II.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING 259
12-II.F. TERMINATION NOTICE 262
PART III: TERMINATION OF TENANCY BY THE OWNER 263
12-III.A. OVERVIEW 263
12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY 263
12-III.C. EVICTION 265
12-III.D. DECIDING WHETHER TO TERMINATE TENANCY 265
12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE 266
EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS 266
Chapter 13 – OWNERS 269
INTRODUCTION 269
PART I. OWNERS IN THE HCV PROGRAM 269
13-I.A. OWNER RECRUITMENT & RETENTION 269
13-I.B. BASIC HCV PROGRAM REQUIREMENTS 271
13-I.C. OWNER RESPONSIBILITIES 272

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

13-I.D. OWNER QUALIFICATIONS 273
13-I.E. NON-DISCRIMINATION 275
PART II. HAP CONTRACTS 276
13-II.A. OVERVIEW 276
13-II.B. HAP CONTRACT CONTENTS 276
13-II.C. HAP CONTRACT PAYMENTS 277
13-II.D. BREACH OF HAP CONTRACT 279
13-II.E. HAP CONTRACT TERM & TERMINATIONS 280
13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT 281
13-II.G. FORECLOSURE 282
Chapter 14 – PROGRAM INTEGRITY 284
INTRODUCTION 284
PART I: PREVENTING, DETECTING, & INVESTIGATING ERRORS AND PROGRAM ABUSE 284
14-I.A. PREVENTING ERRORS & PROGRAM ABUSE 284
14-I.B. DETECTING ERRORS & PROGRAM ABUSE 285
14-I.C. INVESTIGATING ERRORS & PROGRAM ABUSE 286
PART II: CORRECTIVE MEASURES & PENALTIES 288
14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS 288
14-II.B. FAMILY-CAUSED ERRORS & PROGRAM ABUSE 288
14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE 290
14-II.D. AHA-CAUSED ERRORS OR PROGRAM ABUSE 291
14-II.E. CRIMINAL PROSECUTION 292
14-II.F. FRAUD & PROGRAM ABUSE RECOVERIES 292
Chapter 15 – SPECIAL HOUSING TYPES 293
INTRODUCTION 293
PART I: SINGLE ROOM OCCUPANCY 293
15-I.A. OVERVIEW 293
15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION 294
15-I.C. HOUSING QUALITY STANDARDS (HQS) 294
PART II: CONGREGATE HOUSING 295
15-II.A. OVERVIEW 295
15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION 295
15-II.C. HOUSING QUALITY STANDARDS 295
PART III: GROUP HOME 296

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

15-III.A. OVERVIEW 296
15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION 296
15-III.C. HOUSING QUALITY STANDARDS 297
PART IV: SHARED HOUSING 298
15-IV.A. OVERVIEW 298
15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION 298
15-IV.C. HOUSING QUALITY STANDARDS 298
PART V: COOPERATIVE HOUSING 299
15-V.A. OVERVIEW 299
15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION 299
15-V.C. HOUSING QUALITY STANDARDS 299
PART VI: MANUFACTURED HOMES 300
15-VI.A. OVERVIEW 300
15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE 300
15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION 300
15-VI.D. HOUSING QUALITY STANDARDS 301
PART VII: HOMEOWNERSHIP 301
Chapter 16 – PROGRAM ADMINISTRATION 302
INTRODUCTION 302
PART I: ADMINISTRATIVE FEE RESERVE 303
PART II: SETTING PROGRAM STANDARDS & SCHEDULES 305
16-II.A. OVERVIEW 305
16-II.B. PAYMENT STANDARDS 305
16-II.C. UTILITY ALLOWANCES 308
PART III: INFORMAL REVIEWS & HEARINGS 309
16-III.A. OVERVIEW 309
16-III.B. INFORMAL REVIEWS 309
16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS 314
16-III.D. HEARING & APPEAL PROVISIONS FOR NONCITIZENS 323
PART IV: OWNER OR FAMILY DEBTS TO THE AHA 326
16-IV.A. OVERVIEW 326
16-IV.B. REPAYMENT POLICY 327

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP) 329
16-V.A. OVERVIEW 329
16-V.B. SEMAP CERTIFICATION 330
16-V.C. SEMAP INDICATORS 330
PART VI: RECORD KEEPING 334
16-VI.A. OVERVIEW 334
16-VI.B. RECORD RETENTION 334
16-VI.C. RECORDS MANAGEMENT 334
PART VII: REPORTING & RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL 336
16-VII.A. OVERVIEW 336
16-VII.B. REPORTING REQUIREMENT 336
16-VII.C. DATA COLLECTION & RECORD KEEPING 337
PART VIII: DETERMINATION OF INSUFFICIENT FUNDING 337
16-VIII.A. OVERVIEW 337
16-VIII.B. METHODOLOGY 337
PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY 338
16-IX.A. OVERVIEW 338
16-IX.B. DEFINITIONS 338
16-IX.C. NOTIFICATION 339
16-IX.D. DOCUMENTATION 340
16-IX.E. CONFIDENTIALITY 342
EXHIBIT 16-1: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER APPLICANTS & PARTICIPANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA) 342
EXHIBIT 16-2: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS & MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA) ... 345
EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING & ALTERNATE DOCUMENTATION 348
EXHIBIT 16-3: NMA EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING 350
EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING 354
Chapter 17 – PROJECT-BASED VOUCHERS 356

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

INTRODUCTION 356
PART I: GENERAL REQUIREMENTS 357
17-I.A. OVERVIEW 357
17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE 358
17-I.C. RELOCATION REQUIREMENTS 358
17-I.D. EQUAL OPPORTUNITY REQUIREMENTS 359
PART II: PBV OWNER PROPOSALS 359
17-II.A. OVERVIEW 359
17-II.B. OWNER PROPOSAL SELECTION PROCEDURES 359
17-II.C. HOUSING TYPE 364
17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS 365
17-II.E. SUBSIDY LAYERING REQUIREMENTS 365
17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT 366
17-II.G. SITE SELECTION STANDARDS 368
17-II.H. ENVIRONMENTAL REVIEW 370
PART III: DWELLING UNITS 370
17-III.A. OVERVIEW 370
17-III.B. HOUSING QUALITY STANDARDS 370
17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES 371
17-III.D. INSPECTING UNITS 371
PART IV: REHABILITATED & NEWLY CONSTRUCTED UNITS 373
17-IV.A. OVERVIEW 373
17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT 373
17-IV.C. CONDUCT OF DEVELOPMENT WORK 374
17-IV.D. COMPLETION OF HOUSING 375
PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP) 375
17-V.A. OVERVIEW 375
17-V.B. HAP CONTRACT REQUIREMENTS 377
17-V.C. AMENDMENTS TO THE HAP CONTRACT 380
17-V.D. HAP CONTRACT YEAR, ANNIVERSARY & EXPIRATION DATES 380
17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT 381
17-V.F. ADDITIONAL HAP REQUIREMENTS 381
PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS 382
17-VI.A. OVERVIEW 382
17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE 382

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

17-VI.C. ORGANIZATION OF THE WAITING LIST 383
17-VI.D. SELECTION FROM THE WAITING LIST 384
17-VI.E. OFFER OF PBV ASSISTANCE 385
17-VI.F. OWNER SELECTION OF TENANTS 386
17-VI.G. TENANT SCREENING 387
PART VII: OCCUPANCY 388
17-VII.A. OVERVIEW 388
17-VII.B. LEASE 388
17-VII.C. MOVES 391
17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP 393
PART VIII: DETERMINING RENT TO OWNER 394
17-VIII.A. OVERVIEW 394
17-VIII.B. RENT LIMITS 395
17-VIII.C. REASONABLE RENT 398
17-VIII.D. EFFECT OF OTHER SUBSIDY & RENT CONTROL 399
PART IX: PAYMENTS TO OWNER 400
17-IX.A. HOUSING ASSISTANCE PAYMENTS 400
17-IX.B. VACANCY PAYMENTS 400
17-IX.C. TENANT RENT TO OWNER 401
17-IX.D. OTHER FEES & CHARGES 402
EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION 403
EXHIBIT 17-2: SPECIAL PROVISIONS APPLYING TO TPVS AWARDED AS PART OF A VOLUNTARY CONVERSION OF PUBLIC HOUSING UNITS IN PROJECTS THAT INCLUDE RAD PBV UNITS 404
Chapter 18 – PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM 407
INTRODUCTION 407
PART I: GENERAL REQUIREMENTS 407
18-I.A. OVERVIEW AND HISTORY OF THE RAD PROGRAM 407
18-I.B. APPLICABLE REGULATIONS 408
18-I.C. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE 410
18-I.D. RELOCATION REQUIREMENTS 410
18-I.E. EQUAL OPPORTUNITY REQUIREMENTS 412
PART II: PBV PROJECT SELECTION 413
18-II.A. OVERVIEW 413

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

18-II.B. OWNERSHIP AND CONTROL 413
18-II.C. AHA-OWNED UNITS 415
18-II.D. SUBSIDY LAYERING REQUIREMENTS 415
18-II.E. PBV PERCENTAGE LIMITATION & UNIT CAP 417
18-II.F. SITE SELECTION STANDARDS 418
18-II.G. ENVIRONMENTAL REVIEW 418
PART III: DWELLING UNITS 419
18-III.A. OVERVIEW 419
18-III.B. HOUSING QUALITY STANDARDS 419
18-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES 419
18-III.D. INSPECTING UNITS 419
PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT 421
18-IV.A. OVERVIEW 421
18-IV.B. HAP CONTRACT REQUIREMENTS 421
18-IV.C. AMENDMENTS TO THE HAP CONTRACT 422
18-IV.D. HAP CONTRACT YEAR & ANNIVERSARY DATES 423
18-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT 423
18-IV.F. VACANCY PAYMENTS 424
PART V: SELECTION OF PBV PROGRAM PARTICIPANTS 424
18-V.A. OVERVIEW 424
18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION 425
18-V.C. ELIGIBILITY FOR PBV ASSISTANCE 425
18-V.D. ORGANIZATION OF THE WAITING LIST 426
18-V.E. SELECTION FROM THE WAITING LIST 427
18-V.F. OFFER OF PBV ASSISTANCE 427
18-V.G. OWNER SELECTION OF TENANTS 428
18-V.H. TENANT SCREENING 429
PART VI: OCCUPANCY 430
18-VI.A. OVERVIEW 430
18-VI.B. LEASE 430
18-VI.C. PUBLIC HOUSING FSS & ROSS PARTICIPANTS 433
18-VI.D. RESIDENT PARTICIPATION & FUNDING 434
18-VI.E. MOVES 434
18-VI.F. REEXAMINATIONS 437

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

18-VI.G. EARNED INCOME DISALLOWANCE 437
18-VI.H. RESIDENTS' PROCEDURAL RIGHTS 438
18-VI.I. INFORMAL REVIEWS & HEARINGS 438
PART VII: DETERMINING CONTRACT RENT 439
18-VII.A. INITIAL CONTRACT RENTS 439
18-VII.B. ADJUSTING CONTRACT RENTS 439
18-VII.C. UTILITY ALLOWANCES 440
18-VII.D. REASONABLE RENT 441
PART VIII: PAYMENTS TO OWNER 443
18-VIII.A. HOUSING ASSISTANCE PAYMENTS 443
18-VIII.B. VACANCY PAYMENTS 443
18-VIII.C. TENANT RENT TO OWNER 444
18-VIII.D. PHASE-IN OF TENANT RENT INCREASES 445
18.VIII.E. OTHER FEES & CHARGE 446
EXHIBIT 18-1: PBV DEVELOPMENT INFORMATION 447
Chapter 19 – EMERGENCY HOUSING VOUCHER PROGRAM 450
INTRODUCTION 450
PART I: FUNDING 450
19-I.A. FUNDING OVERVIEW 450
19-I.B. SERVICE FEES 452
PART II: PARTNERING AGENCIES 453
19-II.A. CONTINUUM OF CARE (CoC) 453
19-II.B. OTHER PARTNERING ORGANIZATIONS 453
19-II.C. REFERRALS 454
PART III: WAITING LIST MANAGEMENT 455
19-III. A. HCV WAITING LIST 455
19-III.B. EHV WAITING LIST 455
19-III.C. PREFERENCES 457
PART IV: FAMILY ELIGIBLTY 458
19-IV.A. OVERVIEW 458
19-IV.B. REFERRING AGENCY DETERMINATION OF ELIGIBLITY 458
19-IV.C. PHA SCREENING 458
19-IV.D. INCOME VERIFICATION AT ADMISSION 460
19-IV.E. SOCIAL SECURITY NUMBER & CITIZENSHIP STATUS VERIFICATION 462
19-IV.F. AGE & DISABILITY VERIFICATION 462

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

19-IV.G. INCOME TARGETING 463
PART V: HOUSING SEARCH & LEASING 463
19-V.A. INITIAL VOUCHER TERM 463
19-V.B. HOUSING SEARCH ASSISTANCE 463
19-V.C. HQS PRE-INSPECTIONS 464
19-V.D. INITIAL LEASE TERM 465
19-V.E. PORTABILITY 465
19-V.F. PAYMENT STANDARDS 467
19-V.G. TERMINATION OF VOUCHERS 468
PART VI: USE OF FUNDS, REPORTING & FINANCIAL RECORDS 468
Chapter 20 SPECIAL PURPOSE VOUCHERS 470
INTRODUCTION 470
PART I: VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM 470
20-I.A. OVERVIEW 470
20-I.B. REFERRALS 471
20-I.C. HCV PROGRAM ELIGIBILITY 472
20-I.D. CHANGES IN FAMILY COMPOSITION 474
20-I.E. LEASING 474
20-I.F. PORTABILITY 475
20-I.G. TERMINATION OF ASSISTANCE 476
20-I.H. PROJECT-BASING VASH VOUCHERS 477
PART II: MAINSTREAM VOUCHER PROGRAM 478
20-II.A. PROGRAM OVERVIEW 478
20-II.B. ELIGIBLE POPULATION 479
20-II.C. PARTNERSHIP AND SUPPORTIVE SERVICES 479
20-II.D. WAITING LIST ADMINISTRATION 479
20-II.E. PORTABILITY 480
20-II.F. PROJECT-BASING MAINSTREAM VOUCHERS 480
PART III: NON-ELDERLY DISABLED (NED) VOUCHERS 480
20-III.A. PROGRAM OVERVIEW 480
20-III.B. ELIGIBLE POPULATION 482
20-III.C. WAITING LIST 482
20-III.D. LEASE UP 484
20-III.E. PORTABILITY 485

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

INTRODUCTION

About the References Cited in the Model Administrative Plan

Authorities for Policies in the Model Administrative Plan
The authority for PHA policies is derived from many sources. Primary among these sources are federal statutes, federal regulations, and guidance issued by HUD. State law also directs PHA policy. State law must be followed where such law exists and does not conflict with federal regulations. Industry practice may also be used to develop policy as long as it does not conflict with federal requirements or prohibitions.

HUD
HUD provides the primary source of PHA policy through federal regulations, HUD notices, and handbooks. Compliance with federal regulations, current HUD notices, and current HUD handbooks is mandatory.

HUD also provides guidance to PHAs through other means such as HUD-published guidebooks, expired HUD notices, and expired handbooks. Basing PHA policy on HUD guidance is optional, as long as PHA policies comply with federal law, federal regulations and mandatory policy. Because HUD has already determined that the guidance it provides is consistent with mandatory policies, PHA reliance on HUD guidance provides the PHA with a "safe harbor."

Material posted on the HUD website can provide further clarification of HUD policies. For example, FAQs on the HUD website can provide direction on the application of federal regulations in various aspects of the program.

State Law
Where there is no mandatory federal guidance, PHAs must comply with state law, if it exists. Where state law is more restrictive than federal law, but does not conflict with it, the PHA should follow the state law.

Industry Practice
Where no law or HUD authority exists on a particular subject, industry practice may support PHA policy. Industry practice refers to a way of doing things or a policy that has been adopted by a majority of PHAs.

Resources Cited in the Model Administrative Plan
The model administrative plan cites several documents. Where a document or resource is cited frequently, it may be abbreviated. Where it is cited only once or twice, the model administrative plan may contain the entire name of the document or resource. Following is a key to abbreviations used for various sources that are frequently cited in the administrative plan and a list of references and document locations that are referenced in the model administrative plan or that may be helpful to you.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Abbreviations

Throughout the model administrative plan, abbreviations are used to designate certain documents in citations. The following is a table of abbreviations of documents cited in the model administrative plan.

Abbreviation	Document
CFR	Code of Federal Regulations
HCV GB	Housing Choice Voucher Program Guidebook (7420.10G), April 2001.
HUD-50058 IB	HUD-50058 Instruction Booklet
RHIIP FAQs	Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions.
VG	PIH Notice 2004-01 Verification Guidance, March 9, 2004.
HB 4350.3	Occupancy Requirements of Subsidized Multifamily Housing Programs

Resources and Where to Find Them

Following is a list of resources helpful to the PHA or referenced in the model administrative plan, and the online location of each.

Code of Federal Regulations
https://www.ecfr.gov

Earned Income Disregard FAQ
https://www.hud.gov/program_offices/public_indian_housing/phr/about/ao_faq_eid

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule
http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf

Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data
https://www.hud.gov/sites/documents/EIVSECGUIDEPHA.PDF

Executive Order 11063
https://www.archives.gov/federal-register/codification/executive-order/11063.html

Federal Register
https://www.federalregister.gov/

Housing Choice Voucher Program Guidebook (7420.10G), Updated Chapters
https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook

HUD-50058 Instruction Booklet
https://www.hud.gov/sites/documents/FORM50058INSTRUCTBOOKLET.PDF

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004
https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf

Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007

https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf

Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice
https://www.hud.gov/sites/documents/DOC_8993.PDF

Notice PIH 2017-12, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System
https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF

Notice PIH 2018-24, Verification of Social Security Numbers (SSNs) and Social Security (SS) and Supplemental Security Income (SSI) Benefits; and Effective Use of the Enterprise Income Verification (EIV) System's Identity Verification Report
https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-24_EIV_SSN_Notice_FINAL.pdf

OMB Circular A-133

Project-Based Voucher Program; Final Rule
http://www.gpo.gov/fdsys/pkg/FR-2005-10-13/pdf/05-20035.pdf

VAWA Final Rule
http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf

The HUD website https://www.hud.gov/.

Guidebooks, handbooks and other HUD resources may be found at the HUD Clips website:
https://www.hud.gov/program_offices/administration/hudclips.

Chapter 1 - OVERVIEW OF THE PROGRAM & PLAN

INTRODUCTION

The PHA receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. The AHA is not a federal department or agency. A public housing agency (PHA) is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. The AHA enters into an Annual Contributions Contract with HUD to administer the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

program requirements on behalf of HUD. The AHA must ensure compliance with federal laws, regulations and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about the AHA and its programs with emphasis on the HCV program. It also contains information about the purpose, intent and use of the plan and guide.

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA). This part includes a description of the AHA, its jurisdiction, its programs, and its mission and intent.

Part II: The HCV Program. This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.

Part III: The HCV Administrative Plan. This part discusses the purpose and organization of the plan and its revision requirements.

PART I: THE AHA

1-I.A. OVERVIEW

This part explains the origin of the AHA's creation and authorization, the general structure of the organization, and the relationship between the PHA Board and staff.

1-I.B. ORGANIZATION & STRUCTURE OF THE PHA

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the AHA for the jurisdiction of Albuquerque City of Albuquerque County of Bernalillo.

The officials of the AHA are known as commissioners or, collectively, as the board of commissioners. Commissioners are appointed in accordance with state housing law and generally serve in the same capacity as the directors of a corporation, establishing policies under which the AHA conducts business, ensuring that policies are followed by AHA staff and ensuring that the AHA is successful in its mission. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability.

Formal actions of the AHA are taken through written resolutions, adopted by the board of commissioners and entered into the official records of the AHA.

The principal staff member of the AHA is the executive director (ED), hired and appointed by the board of commissioners. The executive director is directly responsible for carrying out the policies established by the board and is delegated the responsibility for hiring, training and supervising the AHA staff in order to manage the day-to-day operations of the AHA. The executive director is responsible for ensuring compliance with federal and state laws and

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

directives for the programs managed. In addition, the executive director's duties include budgeting and financial planning for the agency.

1-I.C. AHA MISSION

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides guiding direction for developing strategy, defining critical success factors, searching out key opportunities, making resource allocation choices, satisfying clients and stakeholders, and making decisions.

AHA Policy
The Mission of the Albuquerque Housing Authority is to empower people in our community through affordable housing and self-sufficiency opportunities.

1-I.D. THE AHA'S PROGRAMS

The following programs are included under this administrative plan:

AHA Policy
The AHA's administrative plan is applicable to the operation of the Housing Choice Voucher program.

1-I.E. THE AHA'S COMMITMENT TO ETHICS & SERVICE

As a public service agency, the AHA is committed to providing excellent service to HCV program participants, owners, and to the community. The AHA's standards include:

- Administer applicable federal and state laws and regulations to achieve high ratings in performance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing – in compliance with program housing quality standards – for very low-income families while ensuring that family rents are fair, reasonable, and affordable.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human services needs.
- Promote fair housing and the equal opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- Promote a housing program which maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.
- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- Create positive public awareness and expand the level of family, owner, and community support in accomplishing the AHA's mission.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.
- Administer an efficient, high-performing agency through continuous improvement of the AHA's support systems and a high level of commitment to our employees and their development.

The AHA will make every effort to keep program participants informed of HCV program rules and regulations, and to advise participants of how the program rules affect them.

PART II: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

1-II.A. OVERVIEW & HISTORY OF THE PROGRAM

The intent of this section is to provide the public and staff with information related to the overall operation of the program. There have been many changes to the program since its inception in 1974 and a brief history of the program will assist the reader to better understand the program.

The United States Housing Act of 1937 (the "Act") is responsible for the birth of federal housing program initiatives. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing developments for low-income residents.

The Housing and Community Development (HCD) Act of 1974 created a new federally assisted housing program – the Section 8 Existing program (also known as the Section 8 Certificate program). The HCD Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

Under the Certificate program, federal housing assistance payments were made directly to private owners of rental housing, where this housing was made available to lower-income families. Eligible families were able to select housing in the private rental market. Assuming that the housing met certain basic physical standards of quality ("housing quality standards") and was within certain HUD-established rent limitations ("fair market rents"), the family would be able to receive rental assistance in the housing unit. Family contribution to rent was generally set at 30 percent of the family's adjusted income, with the remainder of the rent paid by the program.

Another unique feature of the Certificate program was that the rental assistance remained with the eligible family, if the family chose to move to another privately-owned rental unit that met program requirements (in contrast to the public housing program where the rental assistance remains with the unit, should the family decide to move). Consequently, the Certificate program was characterized as tenant-based assistance, rather than unit-based assistance.

The Housing and Community Development (HCD) Act of 1987 authorized a new version of tenant-based assistance – the Section 8 Voucher program. The Voucher program was very similar to the Certificate program in that eligible families were able to select housing in the private rental market and receive assistance in that housing unit.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

However, the Voucher program permitted families more options in housing selection. Rental housing still had to meet the basic housing quality standards, but there was no fair market rent limitation on rent. In addition, family contribution to rent was not set at a limit of 30 percent of adjusted income. Consequently, depending on the actual rental cost of the unit selected, a family might pay more or less than 30 percent of their adjusted income for rent.

From 1987 through 1999, public housing agencies managed both the Certificate and Voucher tenant-based assistance programs, with separate rules and requirements for each. From 1994 through 1998, HUD published a series of new rules, known as "conforming" rules, to more closely combine and align the two similar housing programs, to the extent permitted by the law.

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act – was signed into law. QHWRA eliminated all statutory differences between the Certificate and Voucher tenant-based programs and required that the two programs be merged into a single tenant-based assistance program, now known as the Housing Choice Voucher (HCV) program.

The HCV program was modeled closely on the pre-merger Voucher program. However, unlike the pre-merger Voucher program, the HCV program requires an assisted family to pay at least 30 percent of adjusted income for rent.

The transition of assistance from the Certificate and Voucher programs to the new HCV program began in October 1999. By October 2001, all families receiving tenant-based assistance were converted to the HCV program.

1-II.B. HCV PROGRAM BASICS

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. The PHA is afforded choices in the operation of the program which are included in the PHA's administrative plan, a document approved by the board of commissioners of the PHA.

The HCV program offers mobility to eligible families because they may search for suitable housing anywhere in the PHA's jurisdiction and may also be eligible to move under portability to other PHAs' jurisdictions.

When a family is determined to be eligible for the program and funding is available, the AHA issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the AHA will enter into a contract with the owner and the family will enter into a lease with the owner. Each party makes their respective payment to the owner so that the owner receives full rent.

Even though the family is determined to be eligible for the program, the owner has the responsibility of approving the family as a suitable renter. The AHA continues to make payments

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

to the owner as long as the family is eligible, and the housing unit continues to qualify under the program.

1-II.C. THE HCV PARTNERSHIPS

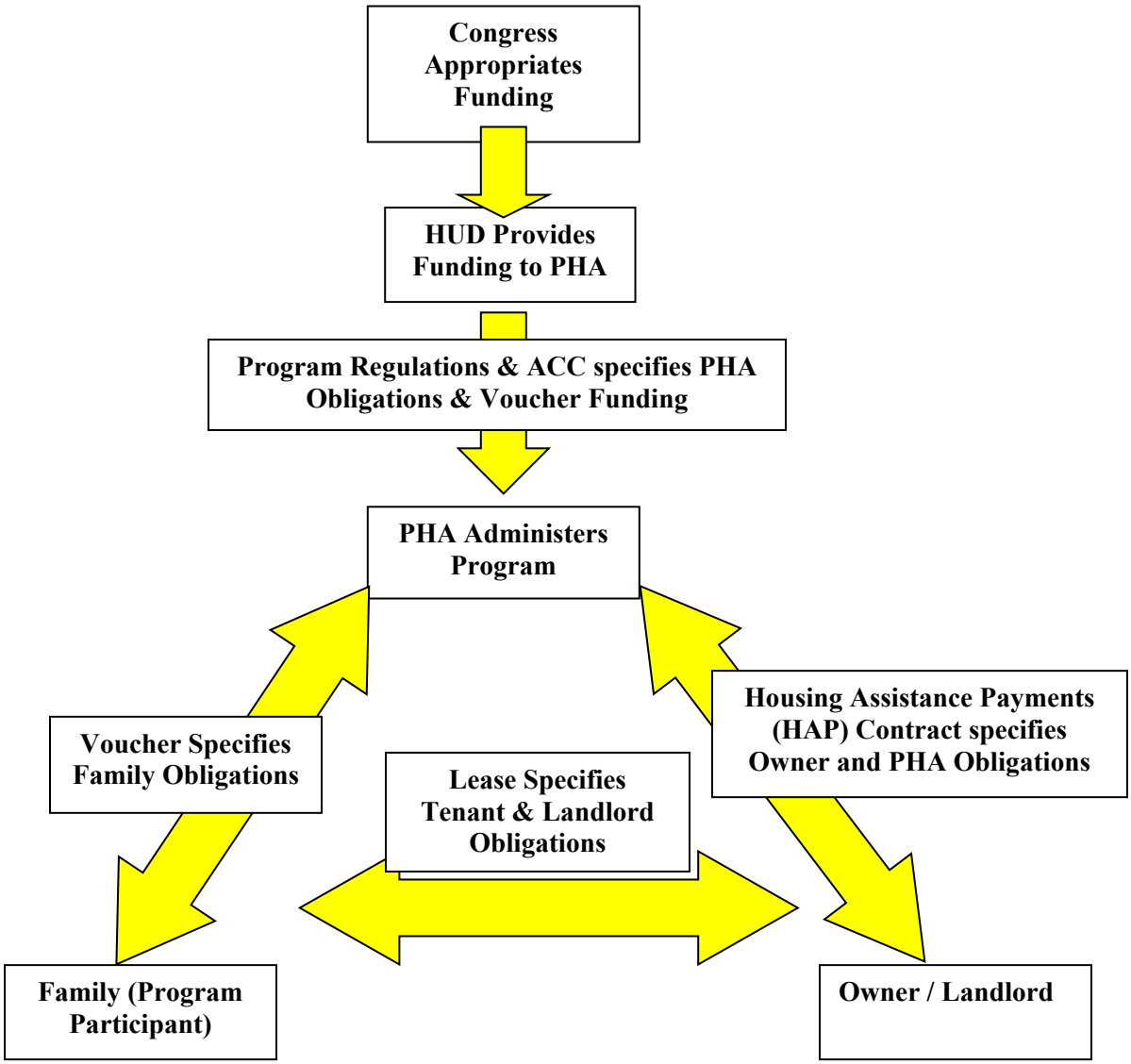
To administer the HCV program, the AHA enters into a contractual relationship with HUD (Consolidated Annual Contributions Contract). The AHA also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

For the HCV program to work and be successful, all parties involved – HUD, the AHA, the owner, and the family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program.

The chart on the following page illustrates key aspects of these relationships.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The HCV Relationships:



© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

What Does HUD Do?
HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement HCV housing program legislation passed by Congress;
- Allocate HCV program funds to AHAs;
- Provide technical assistance to AHAs on interpreting and applying HCV program requirements;
- Monitor AHA compliance with HCV program requirements and AHA performance in program administration.

What Does the AHA Do?

- The AHA administers the HCV program under contract with HUD and has the following major responsibilities:
- Establish local policies to administer the program;
- Review applications from interested applicants to determine whether they are eligible for the program;
- Maintain a waiting list and select families for admission;
- Issue vouchers to eligible families and provide information on how to lease a unit;
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration;
- Approve the rental unit (including assuring compliance with housing quality standards and rent reasonableness), the owner, and the tenancy;
- Make housing assistance payments to the owner in a timely manner;
- Recertify families for continued eligibility under the program;
- Ensure that owners and families comply with their contractual obligations;
- Provide families and owners with prompt, professional service;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the AHA's administrative plan, and other applicable federal, state and local laws.

What Does the Owner Do?
The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine suitability as renters.
    - The AHA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
    - The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract executed with the AHA;
- Comply with all applicable fair housing laws and do not discriminate against anyone;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Maintain the housing unit in accordance with Housing Quality Standards (HQS) and make necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

What Does the Family Do?
The family has the following responsibilities:

- Provide the AHA with complete and accurate information as determined by the AHA to be necessary for administration of the program;
- Make their best and most timely efforts to locate qualified and suitable housing;
- Attend all appointments scheduled by the AHA;
- Allow the AHA to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify the AHA and the owner before moving or terminating the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify the AHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 100: The Fair Housing Act
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Project-Based Vouchers
- 24 CFR Part 985: The Section 8 Management Assessment Program (SEMAP)

PART III: THE HCV ADMINISTRATIVE PLAN

1-III.A. OVERVIEW & PURPOSE OF THE PLAN

The administrative plan is required by HUD. The purpose of the administrative plan is to establish policies for carrying out the programs in a manner consistent with HUD requirements and local goals and objectives contained in the PHA's agency plan. This administrative plan is a supporting document to the PHA agency plan and is available for public review as required by CFR 24 Part 903.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

This administrative plan is set forth to define the PHA's local policies for operation of the housing programs in accordance with federal laws and regulations. All issues related to the HCV program not addressed in this document are governed by such federal regulations, HUD handbooks and guidebooks, notices, and other applicable law. The policies in this administrative plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

The PHA is responsible for complying with all changes in HUD regulations pertaining to the HCV program. If such changes conflict with this plan, HUD regulations will have precedence.

Administration of the HCV program and the functions and responsibilities of PHA staff shall be in compliance with the PHA's personnel policy and HUD regulations as well as all federal, state and local fair housing laws and regulations.

1-III.B. CONTENTS OF THE PLAN

[24 CFR 982.54]
The HUD regulations at 24 CFR 982.54 define the policies that must be included in the administrative plan. They are as follow:

- Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list (Chapter 4);
- Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions of the voucher term. If the PHA decides to allow extensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions, and how the PHA determines the length of any extension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12);
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- The process for establishing and revising voucher payment standards, including policies on administering decreases in the payment standard during the HAP contract term (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to the PHA of amounts the family owes the PHA (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- PHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

Mandatory vs. Discretionary Policy

HUD makes a distinction between:

- Mandatory policies: those driven by legislation, regulations, current handbooks, notices, and legal opinions, and
- Optional, non-binding guidance, including guidebooks, notices that have expired and recommendations from individual HUD staff.

HUD expects PHAs to adopt local policies and procedures that are consistent with mandatory policies in areas where HUD gives the PHA discretion. The PHA's administrative plan is the foundation of those policies and procedures. HUD's directions require PHAs to make policy choices that provide sufficient guidance to staff and ensure consistency to program applicants and participants.

Creating policies based upon HUD guidance is not mandatory but provides a PHA with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If a PHA adopts an alternative strategy, it must make its own determination that the alternative approach is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than HUD's safe harbor, but PHAs should carefully think through those decisions.

1-III.C. ORGANIZATION OF THE PLAN

The plan is organized to provide information to users in particular areas of operation.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

1-III.D. UPDATING & REVISING THE PLAN

The PHA will revise this administrative plan as needed to comply with changes in HUD regulations. The original plan and any changes must be approved by the board of commissioners of the agency, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

AHA Policy
The AHA will review and update the plan as needed, to reflect changes in regulations, AHA operations, or when needed to ensure staff consistency in operation.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 2 – FAIR HOUSING & EQUAL OPPORTUNITY

INTRODUCTION

This chapter explains the laws and HUD regulations requiring PHAs to affirmatively further civil rights and fair housing in all federally assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of the AHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and AHA policies related to these topics in three parts:

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of the PHA regarding nondiscrimination.

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the housing choice voucher program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973 and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of AHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, in the Federal Register.

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require PHAs to treat all applicants and participants equally, providing the same opportunity to access services, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The PHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063 and 13988
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the Federal Register February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Reauthorization Act of 2013 (VAWA)

When more than one civil rights law applies to a situation, the laws will be read and applied together.

Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted will also apply.

AHA Policy
AHA will comply with the State of New Mexico Human Rights Act, by not engaging in any unlawful discriminatory practices, as defined at: §28-1-7(G) NMSA 1978.

AHA will comply with the City of Albuquerque Human Rights Ordinance, by not engaging in any unlawful discriminatory practices, as defined at: §11-3-7 (G) ROA 1994. AHA will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12, and 28-1-7(G) NMSA 1978].

2-I.B. NONDISCRIMINATION

Federal regulations prohibit discrimination against certain protected classes and other groups of people. State and local requirements, as well as AHA policies, can prohibit discrimination based on other factors.

AHA shall not discriminate because of race, color, sex, sexual orientation, gender identity, religion, ancestry, spousal affiliation, familial status, age, disability or national origin (called "protected classes")

Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

The PHA will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12; Executive Order 13988].

AHA Policy
AHA will not use any of these factors to:
- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Subject anyone to sexual harassment

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Treat a person differently in determining eligibility or other requirements for admission Restrict anyone's access to any benefit enjoyed by others in connection with the housing
- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

Providing Information to Families and Owners

AHA must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, AHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

Discrimination Complaints

If an applicant or participant believes that any family member has been discriminated against by the AHA or an owner, the family should advise the AHA. The AHA should make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, the AHA is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

- Upon receipt of a housing discrimination complaint, the AHA is required to:
- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted
- Keep records of all complaints, investigations, notices, and corrective actions [Notice PIH 2014-20]

AHA Policy

Applicants or participants who believe that they have been subject to unlawful discrimination may notify the AHA either orally or in writing.

The AHA will provide a written notice to those alleged to have violated the rule. The AHA will also send a written notice to the complainant informing them that notice was

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

The AHA will attempt to remedy discrimination complaints made against the AHA and will conduct an investigation into all allegations of discrimination.

Following the conclusion of the AHA's investigation, the AHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.

The AHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

The AHA must ensure that persons with disabilities have full access to the AHA's programs and services. This responsibility begins with the first contact by an interested family and continues through every aspect of the program.

AHA Policy
The AHA will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the AHA. The AHA will display posters and other housing information and signage in locations throughout the AHA's office in such a manner as to be easily readable from a wheelchair.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A reasonable accommodation is an adjustment made to a rule, policy, practice, or service that allows a person with a disability to have equal access to the HCV program. For example, reasonable accommodations may include making home visits, extending the voucher term, or approving an exception payment standard in order for a participant to lease an accessible dwelling unit.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the AHA or result in a

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

"fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

Types of Reasonable Accommodations
When needed, the AHA will modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by U.S. mail or email
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the AHA range) if the AHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit
- Providing time extensions for locating a unit, when necessary, because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with AHA staff

2-II.C. REQUEST FOR AN ACCOMMODATION

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the AHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with the disability full access to the AHA's programs and services.

If the need for the accommodation is not readily apparent or known to the AHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable connection, or nexus, between the requested accommodation and the individual's disability.

AHA Policy
The AHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, the AHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

2-II.D. VERIFICATION OF DISABILITY

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Before providing an accommodation, the AHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to the AHA's programs and services.

If a person's disability is obvious or otherwise known to the AHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the AHA, the AHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, the AHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
- The AHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The AHA will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that the AHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the AHA will dispose of it. In place of the information, the AHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION

[Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26]

The AHA must approve a request for an accommodation if the following three conditions are met:

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the AHA, or fundamentally alter the nature of the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA's HCV operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the overall size of the AHA's program with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the AHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the PHA may verify the need for the requested accommodation.

AHA Policy
After a request for an accommodation is presented, the PHA will respond, in writing, within 30 calendar days.

If the AHA denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal the AHA's decision through an informal review (if applicable) or informal hearing (see Chapter 16).

If the AHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden and/or fundamentally alter the nature of the AHA's operations), the AHA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the HCV program and without imposing an undue financial and administrative burden.

If the AHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the AHA will notify the family, in writing, of its determination within 30 calendar days from the date of the most recent discussion or communication with the family.

2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS

HUD regulations require the AHA to ensure that persons with disabilities related to hearing and vision have reasonable access to the AHA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, the AHA shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display teletype) communication will be available via Relay New Mexico. The number for Relay New Mexico is 7-1-1.

To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with AHA staff, one-on-one assistance will be provided upon request.

Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third-party representative (a friend, relative or advocate, named by the program participant) to receive, interpret and explain housing materials and be present at all meetings.

2-II.G. PHYSICAL ACCESSIBILITY

The AHA must comply with a variety of regulations pertaining to physical accessibility, including the following:

- Notice PIH 2010-26
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

The AHA's policies concerning physical accessibility must be readily available to applicants and participants. They can be found in key documents:

- This plan describes the key policies that govern the AHA's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to nondiscrimination and accessibility in federally funded housing programs.
- This plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of AHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the AHA will include a current list of available accessible units known to the AHA and will assist the family in locating an available accessible unit, if necessary.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

In general, owners must permit the family to make reasonable modifications to the unit. However, the owner is not required to pay for the modification and may require that the unit be restored to its original state at the family's expense when the family moves out of the unit.

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

The AHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)].

When applicants with disabilities are denied assistance, the notice of denial must inform them of the AHA's informal review process and their right to request a review. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal review process.

When a participant family's assistance is terminated, the notice of termination must inform them of the AHA's informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, the AHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the AHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the AHA must make the accommodation.

PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2-III.A. OVERVIEW

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the Federal Register.

The AHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP is defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this administrative plan, LEP persons are HCV applicants and participants, and parents and family members of applicants and participants.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

In order to determine the level of access needed by LEP persons, the AHA will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the Housing Choice Voucher program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the AHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the AHA.

2-III.B. ORAL INTERPRETATION

The AHA will offer competent interpretation services free of charge, upon request, to the LEP person.

AHA Policy
The AHA may utilize a language line for telephone interpreter services.

When exercising the option to conduct remote briefings, informal reviews, or hearings, however, the AHA will coordinate with a remote interpretation service which, when available, uses video conferencing technology rather than voice-only interpretation.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the AHA. The AHA, at its discretion, may choose to use the language services even when LEP persons desire to use an interpreter of their choosing. The interpreter may be a family member or friend. If the interpreter chosen by the family is a minor, the PHA will not rely on the minor to serve as the interpreter.

The AHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits.

Where feasible and possible, according to its language assistance plan (LAP), the AHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.

2-III.C. WRITTEN TRANSLATION

Translation is the replacement of a written text from one language into an equivalent written text in another language.

AHA Policy
In order to comply with written-translation obligations, AHA will take the following steps:

- AHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

- If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, AHA does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

2-III.D. IMPLEMENTATION PLAN

After completing the four-factor analysis and deciding what language assistance services are appropriate, the PHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If the PHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the PHA's Housing Choice Voucher program and services.

AHA Policy
AHA presently has an LEP Plan that is listed in Exhibit 2-2.

AHA will review and revise this LEP Plan as necessary.

EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS

[24 CFR Parts 8.3 and 100.201]
A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or
- Has a record of such impairment, or
- Is regarded as having such impairment

The phrase "physical or mental impairment" includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

"Major life activities" includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.

"Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Is regarded as having an impairment" is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the PHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users
- People whose alcohol use interferes with the rights of others
- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the HCV program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference in admission to a rental assistance program, the $400 elderly/disabled household deduction in rent calculations, the $480 dependent deduction in rent calculations, the allowance for medical expenses in rent calculations, or the allowance for disability. as.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the HCV program, yet an accommodation is needed to provide equal opportunity.

EXHIBIT 2-2: LIMITED ENGLISH PROFICIENCY PLAN

Plan Statement

Albuquerque Housing Authority (AHA) has adopted this plan to provide meaningful access to its programs and activities by persons with Limited English Proficiency (LEP). In accordance with federal guidelines the PHA will make reasonable efforts to provide or arrange free language assistance for its LEP clients, including applicants, recipients and/or persons eligible for Public Housing and/or Section 8 programs.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Language Assistance
AHA staff will take reasonable steps to provide the opportunity for meaningful access to LEP clients who have difficulty communicating in English. A person who does not speak English as their primary language and who has a limited ability to read, write, speak or understand English may be a Limited English Proficient person and may be entitled to language assistance with respect to AHA programs and activities. AHA will reasonably provide free language assistance to LEP clients in the language preferred. AHA has the discretion to determine whether language assistance is needed, and if so, the type of language assistance necessary to provide meaningful access.

Providing Notice to LEP Clients
AHA shall provide notice to LEP clients of the availability of free language assistance that ensures meaningful access to AHA's programs and services. Notices will be posted in the AHA office at all section receptionist areas where clients are served.

Oral Interpretation Services
When interpretation is needed and is reasonable, it shall be provided in a timely manner so as to avoid the effective denial of a benefit or service.

Formal
When necessary to provide meaningful access for LEP clients, AHA will provide qualified interpreters, including AHA bilingual staff and contract vendors, if available.

AHA shall take reasonable steps to ensure competency of the language service provider. When providing oral language assistance, AHA shall use the following general criteria to ensure effective communication with LEP persons:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language.
- Knowledge in both languages of any specialized terms or concepts particular to AHA's programs or activities.
- Understanding of and following confidentiality and impartiality rules;
- Understanding of and adherence to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Informal
Informal interpreters may include family members, friends, legal guardians, service representatives or advocates of the LEP client. AHA staff will determine whether it is appropriate to rely on informal interpreters, depending upon the circumstances and subject matter of the communication. Children will not be used as informal interpreters.

An LEP person may use an informal interpreter of his or her own choosing and at their expense, either in place of or as a supplement to the free language assistance offered by AHA. If an LEP client chooses to use an informal interpreter, AHA reserves the right to also have a formal interpreter present.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Telephone Services and On-Site Visitors
AHA staff will make every effort to determine the language being spoken by the LEP client. "I speak" cards will be available at the front desk. AHA will identify a staff interpreter. If one is not available at the time of the call/visit, the LEP client will be requested to call/return when an interpreter can be available. An informal or formal interpreter will be secured within a reasonable time frame.

Written Communications
AHA correspondence will be in the English language. At any time, an LEP client may request the correspondence be orally explained to them in the preferred language.

Correspondence received in languages other than English will be translated by AHA staff who speak the language or by AHA's contracted translation vendor.

Translation of Documents
AHA will weigh the cost and benefits of translating documents for potential LEP groups, considering the expense of translating the documents, the barriers to meaningful translation or interpretation of technical housing information and the likelihood of frequent changes in documents.

AHA will undertake this examination when an eligible LEP group constitutes five percent of an eligible client group as determined in the four-factor analysis. If AHA determines that translation is necessary and appropriate, AHA will arrange to translate such documents/correspondence.

LEP Plan Distribution and Staff Compliance
AHA will ensure that staff knows the obligation to provide meaningful access to information and services to LEP clients. AHA will ensure that:

- LEP policy is provided to all staff and available at the front desk;
- Staff is competent on LEP policies and procedures; and
- Staff having contact with the public is trained to work effectively with interpreters.

Monitoring
AHA will review and revise this LEP Plan as necessary. The review will include:

- Analysis of staff requests for contract interpreters: number of requests, languages requested, costs, etc.
- Periodic assessment and update the four-factor analysis, including but not limited to:
    1. The number or proportion of LEP persons eligible to be served or likely to be encountered by AHA.
    2. The frequency with which LEP persons using a particular language come into contact with AHA.
    3. The nature and importance of AHA program, activity or service to the persons' life.
    4. The AHA's resources and the cost of providing meaningful access. Reasonable steps may cease to be reasonable where the costs imposed substantially exceed the benefits.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Chapter 3 – ELIGIBILITY

INTRODUCTION

The AHA is responsible for ensuring that every individual and family admitted to the HCV program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted to the program. The family must provide any information needed by the AHA to confirm eligibility and determine the level of the family's assistance.

To be eligible for the HCV program:

- The applicant family must:
  - Qualify as a family as defined by HUD and the AHA.
  - Have income at or below HUD-specified income limits.
  - Qualify on the basis of U.S. citizenship or the eligible U.S. immigration status of family members.
  - Provide social security number information for household members as required.
  - Consent to the AHA's collection and use of family information as provided for in AHA-provided consent forms.
  - Not currently be receiving a duplicative subsidy.
- The AHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the AHA.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and AHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Part II: Basic Eligibility Criteria. This part discusses income eligibility, and rules regarding U.S. citizenship, social security numbers, and family consent.

Part III: Denial of Assistance. This part covers factors related to an applicant's past or current conduct (e.g., criminal activity) that can cause the AHA to deny assistance.

PART I: DEFINITIONS OF FAMILY & HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the assisted unit. This part provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

3-I.B. FAMILY & HOUSEHOLD

[24 CFR 982.201(c); FR Notice 02/03/12; Notice PIH 2014-20]
The terms *family and household* have different meanings in the HCV program.

Family
To be eligible for assistance, an applicant must qualify as a family. Family as defined by HUD includes, but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other single person; or a group of persons residing together. Such group includes but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. The AHA has the discretion to determine if any other group of persons qualifies as a family.

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

AHA Policy
A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

Each family must identify the individuals to be included in the family at the time of application and must notify the AHA if the family's composition changes.

Household
Household is a broader term that includes additional people who, with the AHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

3-I.C. FAMILY BREAKUP & REMAINING MEMBER OF TENANT FAMILY

Family Breakup [24 CFR 982.315]
Except under the following conditions, the AHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up:

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the AHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see section 16-IX.D of this plan.)
- In accordance with Notice PIH 2017-18, for HUD-Veterans Affairs Supportive Housing (HUD-VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

termination of the perpetrator's HUD-VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD-VASH voucher, which must be issued to another eligible family upon the voucher's turnover.

- If a court determines the disposition of property between members of the assisted family, the AHA is bound by the court's determination of which family members continue to receive assistance.

AHA Policy
When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date and/or waitlist position. Other former family members may make a new application with a new application date if the waiting list is open.

If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted.

In the absence of a judicial decision or an agreement among the original family members, the AHA will determine which family will retain their placement in the admissions lottery or continue to receive assistance. In making its determination, the AHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals.

Remaining Member of a Tenant Family [24 CFR 5.403]
The HUD definition of family includes the remaining member of a tenant family, which is a member of an assisted family who remains in the unit when other members of the family have left the unit. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

If dependents are the only "remaining members of a tenant family" and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6-I.B, for the policy on "Caretakers for a Child."

3-I.D. HEAD OF HOUSEHOLD

[24 CFR 5.504(b)]
Head of household means the adult member of the family who is considered the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a co-head or spouse.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
The family may designate any qualified family member as the head of household.

The head of household must have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

3-I.E. SPOUSE, COHEAD, & OTHER ADULT

A family may have a spouse or co-head, but not both [HUD-50058 IB, p. 13].

Spouse means the marriage partner of the head of household.

AHA Policy
A marriage partner includes the partner in a legal marriage as defined in New Mexico state law. The State of New Mexico does not recognize the doctrine of common law marriage. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

A *co-head* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one co-head.

AHA Policy
Minors who are emancipated under state law may be designated as a co-head.

Other adult means a family member, other than the head, spouse, or co-head, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.

3-I.F. DEPENDENT

[24 CFR 5.603]
A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, co-head, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a dependent allowance as described in Chapter 6.

Joint Custody of Dependents

AHA Policy
For the AHA HCV Program:
The HCV Program will define "Dependents" who are subject to a joint custody arrangement according to NM State definitions. Dependents that are subject to a joint

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

custody arrangement will be considered a member of the family, if they live with the applicant or participant family 35 percent or more of the time.

For the AHA PBV Program:

The PBV Program will define "Dependents" who are subject to a joint custody agreement according to US Federal definitions. Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 50 percent or more of the time.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the AHA will make the determination based on available documents such as: court orders, or a federal income tax return showing which family has claimed the child as a dependent for federal child income tax credit purposes, or school enrollment documentation listing the child's primary residence.

3-I.G. FULL-TIME STUDENT

[24 CFR 5.603; HCV GB, p. 5-29]
A *full-time student* (FTS) is a person who is attending school or vocational training on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution.

Identifying each FTS is important because: (1) each family member that is an FTS, other than the head, spouse, or co-head, qualifies the family for a dependent allowance, and (2) the earned income of such an FTS is treated differently from the income of other family members.

3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, & ELDERLY FAMILY

[24 CFR 5.100 and 5.403, FR Notice 02/03/12]

Elderly Persons
An *elderly person* is a person who is at least 62 years of age.

Near-Elderly Persons
A *near-elderly person* is a person who is 50 to 61 years of age.

Elderly Family
An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person. Identifying elderly families is important because elderly families qualify for the elderly family allowance as described in Chapter 6.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

3-I.I. PERSONS WITH DISABILITIES & DISABLED FAMILY

[24 CFR 5.403, FR Notice 02/03/12]

Persons with Disabilities
Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, the AHA must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

Disabled Family
A disabled family is one in which the head, spouse, or co-head is a person with disabilities. Identifying disabled families is important because these families qualify for the disabled family allowance as described in Chapter 6.

Even though persons with drug or alcohol dependencies are considered persons with disabilities, this does not prevent the PHA from denying assistance for reasons related to alcohol and drug abuse in accordance with the policies found in Part III of this chapter, or from terminating assistance in accordance with the policies in Chapter 12.

3-I.J. GUESTS

[24 CFR 5.100]
A guest is a person temporarily staying in the unit with the consent of a member of the household who has expressed or implied authority to so consent.

AHA Policy
A guest can remain in the assisted unit no longer than 30 consecutive days or a total of 90 cumulative calendar days during any 12-month period.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 50 or 65 percent of the time depending on the Section Program, are not subject to the time limitations of guests as described above.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 40 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

3-I.K. FOSTER CHILDREN & FOSTER ADULTS

Foster adults are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609].

The term *foster child* is not specifically defined by the regulations.

Foster children and foster adults who are living with an applicant or who have been approved by the AHA to live with a participant family are considered household members but not family members. The income of foster children/adults is not counted in family annual income, and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603; HUD-50058 IB, p. 13].

AHA Policy
A *foster child* is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L.

3-I.L. ABSENT FAMILY MEMBERS

Individuals may be absent from the family, either temporarily or permanently, for a variety of reasons including educational activities, placement in foster care, employment, illness, incarceration, and court order.

Definitions of Temporarily and Permanently Absent

AHA Policy
Generally, an individual who is or is expected to be absent from the assisted unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally, an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent Students

AHA Policy
When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the AHA indicating that the student has established a separate household, or the family declares that the student has established a separate household.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Absences Due to Placement in Foster Care [24 CFR 5.403]
Children temporarily absent from the home as a result of placement in foster care are considered members of the family.

AHA Policy
If a child has been placed in foster care, AHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency or court records confirm that the child has been permanently removed from the home, the child will be counted as a family member.

Absent Head, Spouse, or Co-head

AHA Policy
An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

Family Members Permanently Confined for Medical Reasons [HCV GB, p. 5-22]
If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

AHA Policy
An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.

The AHA will request verification of the family member's permanent absence from a responsible medical professional. If the responsible medical professional cannot provide a determination, the person will be considered temporarily absent. If the family certifies that the family member is confined on a permanent basis, they may present, and the AHA will consider, any additional documentation or evidence.

Return of Permanently Absent Family Members

AHA Policy
The family must request AHA approval for the return of any adult family members that the AHA previously determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

3-I.M. LIVE-IN AIDE

A live-in aide is a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403The AHA must

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by the family member with disabilities.

The income of a live-in aide is not counted in the calculation of annual income for the family [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. Because live-in aides are not family members, a relative who serves as a live-in aide would not be considered a remaining member of a tenant family.

AHA Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, nurse, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near elderly, or disabled family member. For continued approval, the family must submit a new, written request, which is subject to AHA verification, at each annual reexamination.

In addition, the family and live-in aide will be required to submit a written certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services. A Spouse is obligated for the support of their marriage partner; as a result, a spouse does not qualify to be added as live-in aide of their current spouse.

The AHA will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

The AHA will notify the family of its decision in writing within 10 business days of receiving a request for a live-in aide.

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY & TARGETING

Income Limits

HUD establishes income limits for all areas of the country and publishes them annually in the Federal Register. They are based upon estimates of median family income with adjustments for family size. The income limits are used to determine eligibility for the program and for income targeting purposes as discussed in this section.

Definitions of the Income Limits [24 CFR 5.603(b)]

Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Very low-income family. A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

Extremely low-income family. A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Using Income Limits for Eligibility [24 CFR 982.201]
Income limits are used for eligibility only at admission. Income eligibility is determined by comparing the annual income of an applicant to the applicable income limit for their family size. In order to be income eligible, an applicant family must be one of the following:

- A very low-income family
- A low-income family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4]

AHA Policy
The AHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time, they were issued a voucher by the AHA.

- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173
- A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101

HUD permits the AHA to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the AHA plan and the consolidated plans for local governments within the AHA's jurisdiction.

AHA Policy
The AHA has not established any additional categories of eligible low-income families.

Using Income Limits for Targeting [24 CFR 982.201]
At least 75 percent of the families admitted to the AHA's program during an AHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the AHA demonstrates that it has made all required efforts but has been unable to attract an adequate number of qualified extremely low-income families.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not counted for income targeting purposes.

3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS

[24 CFR 5, Subpart E]
Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible U.S. immigration status. At least one family member must be a citizen, national, or noncitizen with eligible U.S. immigration status in order for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their U.S. citizenship status when they apply. Where feasible, and in accordance with the AHA's Limited English Proficiency (LEP) Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

Section 214 Declaration [24 CFR 5.508]
HUD requires each family member to declare whether the individual is a U.S. citizen, a U.S. national, or an eligible noncitizen, except those members who elect not to contend that they have eligible U.S. immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For U.S. citizens, U.S. nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their U.S. immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

U.S. Citizens and Nationals
In general, U.S. citizens and U.S. nationals are required to submit only a signed declaration as verification of their status. However, HUD regulations permit the AHA to request additional documentation of their status, such as a U.S. Passport book or U.S. Passport card.

> **AHA Policy**
> Family members who declare U.S. citizenship or U.S. national status will not be required to provide additional documentation unless the AHA receives information indicating that an individual's declaration may not be accurate.

Eligible Noncitizens
In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with AHA efforts to verify their U.S. immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Lawful residents of the Marshall Islands, the Federated States of Micronesia, and Palau, together known as the Freely Associated States, or FAS, are eligible for housing assistance under section 141 of the Compacts of Free Association between the U.S. Government and the Governments of the FAS [Public Law 106-504].

Ineligible Noncitizens
Those noncitizens who do not wish to contend their U.S. immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. The AHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

Mixed Families
A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered mixed families. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 16 for a discussion of informal hearing procedures.

Ineligible Families [24 CFR 5.514(d), (e), and (f)]
AHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the AHA that the individual or at least one family member is eligible. Verification of eligibility for this purpose occurs when the individual or family members have submitted documentation to the AHA in accordance with program requirements [24 CFR 5.512(a)].

> **AHA Policy**
> The AHA will not provide assistance to a family before the verification of at least one family member.
>
> When AHA determines that an applicant family does not include any U.S. citizens, U.S. nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice of the determination.
>
> The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the PHA. The informal hearing with the AHA may be requested

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

Timeframe for Determination of U.S. Citizenship Status [24 CFR 5.508(g)]
For new occupants joining the assisted family, the AHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first.

If an individual qualifies for a time extension for the submission of required documents, the AHA must grant such an extension for no more than 30 days [24 CFR 5.508(h)].

Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

AHA Policy
The AHA will verify the U.S. citizenship status of applicants at the time other eligibility factors are determined.

3-II.C. SOCIAL SECURITY NUMBERS

[24 CFR 5.216 and 5.218, Notice PIH [2018-24]
The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. If a child under age 6 has been added to an applicant family within 6 months prior to voucher issuance, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract. A detailed discussion of acceptable documentation is provided in Chapter 7.

Note: These requirements do not apply to noncitizens who do not contend eligible immigration status.

In addition, each participant who has not previously disclosed a SSN, has previously disclosed an SSN that HUD or the SSA determined was invalid, or has been issued a new SSN must submit their complete and accurate SSN and the documentation required to verify the SSN at the time of the next interim or annual reexamination or recertification. Participants age 62 or older as of January 31, 2010, whose determination of eligibility was begun before January 31, 2010, are exempt from this requirement and remain exempt even if they move to a new assisted unit.

The AHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION

[24 CFR 5.230; HCV GB, p. 5-13]
HUD requires each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, the form HUD-52675 Debts Owed to Public Housing Agencies and Terminations, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

The AHA must deny admission to the program if any member of the applicant family fails to sign and submit the consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)].

3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION

[24 CFR 5.612, FR Notice 4/10/06]
Section 327 of Public Law 109-115 and the implementing regulation at 24 CFR 5.612 established new restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with AHA policy, the income of the student's parents will not be considered in determining the student's eligibility.

The new law does not apply to students who reside with parents who are applying to receive HCV assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

Definitions
In determining whether and how the new eligibility restrictions apply to a student, the AHA will rely on the following definitions [FR 4/10/06, p. 18148].

Dependent Child
In the context of the student eligibility restrictions, dependent child means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of dependent in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Independent Student

AHA Policy

The AHA will consider a student "independent" from his or her parents and the parents' income will not be considered when determining the student's eligibility if the following four criteria are all met:

- The individual is of legal contract age under state law
- The individual has established a household separate from his/her parents for at least one year prior to application for occupancy or the individual meets the U.S Department of Education's definition of independent student
- To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:
    - The individual is at least 24 years old by December 31 of the award year for which aid is sought
    - The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older
    - The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence
    - The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes
    - The individual is a graduate or professional student
    - The individual is married
    - The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)

The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:

- A local educational agency homeless liaison
- The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director
- A financial aid administrator
- The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances
- The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

If AHA determines that an individual meets the definition of a *vulnerable youth* such a determination is all that is necessary to determine that the person is an *independent*

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

student for the purposes of using only the student's income for determining eligibility for assistance.

AHA will verify that a student meets the above criteria in accordance with the policies in Section 7-II.E.

Institution of Higher Education
The AHA will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an institution of higher education (see Exhibit 3-2).

Parents

AHA Policy
For purposes of student eligibility restrictions, the definition of parents includes biological or adoptive parents, stepparents (as long as they are currently married to the biological or adoptive parent), and guardians (e.g., grandparents, aunt/uncle, godparents, etc.).

Person with Disabilities
The AHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a person with disabilities (see Exhibit 3-1).

Veteran

AHA Policy
A veteran is a person who served in the active-duty military, naval, or air service of the United States of America and who was discharged or released from such service under conditions other than dishonorable.

Vulnerable Youth

AHA Policy
A *vulnerable youth* is an individual who meets the U.S. Department of Education's definition of *independent student* in paragraphs (b), (c), or (h), as adopted in Section II of FR Notice 9/21/16:

- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence.
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:
    - A local educational agency homeless liaison
    - The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- A financial aid administrator

Determining Student Eligibility

If a student is applying for assistance on his/her own, apart from his/her parents, the AHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, the AHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

AHA Policy

For any student who is subject to the 24 CFR 5.612 restrictions, the PHA will:

- Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program
- Determine whether the student is independent from his/her parents in accordance with the definition of independent student in this section
- Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program

If the AHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the AHA will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.

Determining Parental Income Eligibility

AHA Policy

For any student who is subject to the 24 CFR 5.612 restrictions and who does not satisfy the definition of independent student in this section, the PHA will determine the income eligibility of the student's parents as follows:

- If the student's parents are married and living together, the AHA will obtain a joint income declaration and certification of joint income from the parents.
- If the student's parent is widowed or single, the AHA will obtain an income declaration and certification of income from that parent.
- If the student's parents are divorced or separated, the AHA will obtain an income declaration and certification of income from each parent.
- If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, the AHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. The AHA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

In determining the income eligibility of the student's parents, the AHA will use the income limits for the jurisdiction in which the parents live.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

3-II.F. EIV SYSTEM SEARCHES

[Notice PIH 2018-18; EIV FAQs; EIV System Training 9/30/20]

Existing Tenant Search

Prior to admission to the program, the PHA must search for all household members using the EIV Existing Tenant Search module. The PHA must review the reports for any SSA matches involving another PHA or a multifamily entity and follow up on any issues identified. The PHA must provide the family with a copy of the Existing Tenant Search results if requested. At no time may any family member receive duplicative assistance.

If the tenant is a new admission to the PHA, and a match is identified at a multifamily property, the PHA must report the program admission date to the multifamily property and document the notification in the tenant file. The family must provide documentation of move-out from the assisted unit, as applicable.

AHA Policy

AHA will contact the PHA or owner identified in the report to confirm that the family has moved out of the unit and obtain documentation of current tenancy status, including a form HUD-50058 or 50059, as applicable, showing an end of participation. AHA will only approve assistance contingent upon the move-out from the currently occupied assisted unit.

Debts Owed to PHAs and Terminations

All adult household members must sign the form HUD-52675 Debts Owed to Public Housing and Terminations. Prior to admission to the program, the PHA must search for each adult family member in the Debts Owed to PHAs and Terminations module.

If a current or former tenant disputes the information in the module, the tenant should contact the PHA directly in writing to dispute the information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV. Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the program.

AHA Policy

AHA will require each adult household member to sign the form HUD-52675 once at the eligibility determination. Any new members added to the household after admission will be required to sign the form HUD-52675 prior to being added to the household.

AHA will search the Debts Owed to PHAs and Terminations module as part of the eligibility determination for new households and as part of the screening process for any household members added after the household is admitted to the program. If any information on debts or terminations is returned by the search, AHA will determine if this information warrants a denial in accordance with the policies in Part III of this chapter.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Income and IVT Reports
For each new admission, the PHA is required to review the EIV Income and IVT Reports to confirm and validate family reported income within 120 days of the IMS/PIC submission date of the new admission. The PHA must print and maintain copies of the EIV Income and IVT reports in the tenant file and resolve any discrepancies with the family within 60 days of the EIV Income or IVT report dates.

PART III: DENIAL OF ASSISTANCE

3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the PHA, and those in which denial of assistance is optional for the PHA.

While the regulations state that the PHA must prohibit admission for certain types of criminal activity and give the PHA the option to deny for other types of previous criminal history, more recent HUD rules and OGC guidance must also be taken into consideration when determining whether a particular individual's criminal history merits denial of admission.

When considering any denial of admission, PHAs may not use arrest records as the basis for the denial. Further, HUD does not require the adoption of "One Strike" policies and reminds PHAs of their obligation to safeguard the due process rights of applicants and tenants [Notice PIH 2015-19].

HUD's Office of General Counsel issued a memo on April 4, 2016, regarding the application of Fair Housing Act standards to the use of criminal records. This memo states that a PHA violates the Fair Housing Act when their policy or practice has an unjustified discriminatory effect, even when the PHA had no intention to discriminate. Where a policy or practice that restricts admission based on criminal history has a disparate impact on a particular race, national origin, or other protected class, that policy or practice is in violation of the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the PHA, or if that interest could be served by another practice that has a less discriminatory effect [OGC Memo 4/4/16].

PHAs who impose blanket prohibitions on any person with any conviction record, no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then will be unable to show that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even a PHA with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary. To do this, the PHA must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and property and criminal conduct that does not.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Forms of Denial [24 CFR 982.552(a)(2); HCV GB, p. 5-35]
Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list
- Denying or withdrawing a voucher
- Not approving a request for tenancy or refusing to enter into a HAP contract
- Refusing to process a request for or to provide assistance under portability procedures

Prohibited Reasons for Denial of Program Assistance [24 CFR 982.202(b), 24 CFR 5.2005(b)]
HUD rules prohibit denial of program assistance to the program based on any of the following criteria:

- Age, disability, race, color, religion, sex, or national origin (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the AHA's jurisdiction under portability. (See Chapter 10.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant is otherwise qualified for assistance (See section 3-III.G.)

3-III.B. MANDATORY DENIAL OF ASSISTANCE

[24 CFR 982.553(a)]
HUD requires the PHA to deny assistance in the following cases:

- Any member of the household has been evicted from federally assisted housing in the last 3 years for drug-related criminal activity. HUD permits, but does not require, the PHA to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).

  AHA Policy
  AHA will admit an otherwise-eligible family who was evicted from federally assisted housing within the past 3 years for drug-related criminal activity, if the AHA is able to independently verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the AHA, or the person who committed the crime, is no longer living in the household.

- The AHA determines that any household member is currently engaged in the use of illegal drugs.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
Currently engaged in is defined as any use of illegal drugs during the previous three months.

- The AHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

  AHA Policy
  In determining reasonable cause, the AHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, citations, or evictions of household members related to the use of illegal drugs. A conviction will be given more weight than an arrest. The AHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE

HUD permits, but does not require, the AHA to deny assistance for the reasons discussed in this section.

Criminal Activity [24 CFR 982.553]
HUD permits, but does not require, the AHA to deny assistance if the AHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the family would receive assistance, certain types of criminal activity.

AHA Policy
If any household member is currently engaged in or has engaged in any of the following criminal activities, within the past three years, the family may be denied assistance.

Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

Criminal activity that may threaten the health or safety of property owners, management staff, and persons performing contract administration functions or other responsibilities on behalf of the AHA (including an AHA employee or an AHA contractor, subcontractor, or agent).

Immediate vicinity means within a three-block radius of the premises.

Evidence of such criminal activity includes, but is not limited to:

- Any conviction for drug-related or violent criminal activity within the past three years.
- Records of arrests for drug-related or violent criminal activity within the past three years, although a record of arrest(s) will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.
- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past three years.
- A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity.

In making its decision to deny assistance, the AHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the AHA may, on a case-by-case basis, decide not to deny assistance.

Previous Behavior in Assisted Housing [24 CFR 982.552(c)]

HUD authorizes the PHA to deny assistance based on the family's previous behavior in assisted housing.

Per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, PHAs are no longer permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [FR Notice 12/29/14].

AHA Policy

AHA will deny assistance to an applicant family if:

- The family does not provide information that the AHA or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to the AHA.
- Any family member has been evicted from federally assisted housing in the last three years.
- If any PHA in the U.S. has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- The family owes rent or other amounts to any PHA in connection with Section 8 or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being offered a Voucher.
- If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being offered a Voucher.
- The family has breached the terms of a repayment agreement entered into with the AHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being offered a Voucher.
- A family member has engaged in or threatened violent or abusive behavior toward AHA personnel.

Abusive or violent behavior towards AHA personnel includes verbal, written as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to deny assistance, the AHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the AHA may, on a case-by-case basis, decide not to deny assistance.

3-III.D. SCREENING

Screening for Eligibility

AHA is authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists the AHA in complying with HUD requirements and PHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records the AHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

AHA Policy

AHA will perform a criminal background check through local and national law enforcement agencies as well as court databases for every adult household member.

If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, the AHA may request a fingerprint card and may request information from the National Crime Information Center (NCIC).

While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose.

PHAs are required by HUD to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

AHA Policy
The AHA will use the Dru Sjodin National Sex Offender database to screen applicants for admission.

Additionally, AHA must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

If the PHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the AHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission. [24 CFR 5.903(f) and 5.905(d)].

Screening for Suitability as a Tenant [24 CFR 982.307]
The AHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The AHA has the authority to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

AHA Policy
AHA will not conduct additional screening to determine an applicant family's suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. The AHA must inform the owner that screening and selection for tenancy is the responsibility of the owner. An owner may consider a family's history with respect to factors such as: payment of rent and utilities, caring for a unit and premises, respecting the rights of other residents to the peaceful enjoyment of their housing, criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

HUD requires the AHA to provide prospective owners with the family's current and prior address (as shown in AHA records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the AHA to provide owners with additional information, as long as families are notified that the information will be provided, and the same type of information is provided to all owners.

The AHA may not disclose to the owner any confidential information provided to the AHA by the family in response to an AHA request for documentation of domestic violence, dating

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

AHA Policy
AHA will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the initial HQS inspection or before. The AHA will not provide any additional information to the owner, such as tenancy history or criminal history.

3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE

Evidence [24 CFR 982.553(c)]

AHA Policy
AHA will use the concept of the preponderance of the evidence as the standard for making all admission decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined merely by the number of witnesses, but by the greater weight of all evidence.

Consideration of Circumstances [24 CFR 982.552(c)(2)]
HUD authorizes the AHA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandatory (see Section 3-III.B).

AHA Policy
AHA may consider the following facts and circumstances prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents' safety or property
- The effects that denial of assistance may have on other members of the family who were not involved in the action or failure to act
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence, sexual assault, or stalking
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

While a record of arrest(s) will not be used as the sole basis for denial, an arrest may, however, trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the AHA may obtain the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

police incident report associated with the arrest and consider the reported circumstances of the arrest. The AHA may also consider:

- Any statements made by witnesses, or the applicant not included in the police incident report
- Whether criminal charges were filed
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
- Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

In the case of drug abuse, whether the culpable household member is participating in or has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully.

AHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

Removal of a Family Member's Name from the Application

Should the AHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the AHA must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, the AHA may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 982.552(c)(2)(ii)].

AHA Policy

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit, stay as a guest, or reside in the assisted unit.

After admission to the program, the family must present evidence of the former family member's current address upon AHA request.

Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]

If the family includes a person with disabilities, the AHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the AHA will determine whether the behavior is related to the stated disability. If so, upon the family's request, the AHA will determine whether admitting the family as a reasonable accommodation is appropriate. The AHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

If the family is eligible for assistance, the AHA will notify the family in writing and schedule a tenant briefing, as discussed in Chapter 5.

If the AHA determines that a family is not eligible for the program for any reason, the family must be notified promptly. The notice must describe: (1) the reasons for which assistance has been denied, (2) the family's right to an informal review, and (3) the process for obtaining the informal review [24 CFR 982.554 (a)]. See Chapter 16, for informal review policies and procedures.

AHA Policy
The family will be notified of a decision to deny assistance in writing within 10 business days of the determination.

If AHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the AHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The AHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].

AHA Policy
If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the AHA will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact the AHA to dispute the information within that 10 business days period, the AHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

Notice requirements related to denying assistance to noncitizens are contained in Section 3-II.B.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault or stalking are contained in Section 3-III.G.

3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, & STALKING

The Violence against Women Act of 2013 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying an applicant admission to the HCV program "on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant otherwise qualifies for assistance or admission."

Definitions of key terms used in VAWA are provided in section 16-IX of this plan, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

Notification

VAWA 2013 expanded notification requirements to include the obligation for AHA to provide applicants who are denied assistance with a notice of rights and the Form HUD-50066 at the time the applicant is denied.

AHA Policy

The AHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under the AHA's policies.

While the AHA is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, or stalking, the applicant may inform the AHA that their status as a victim is directly related to the grounds for the denial. The AHA will request that the applicant provide enough information to the AHA to allow the AHA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

The AHA will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-5382. The AHA will request in writing that an applicant wishing to claim protection under VAWA notify the AHA within 14 business days.

Documentation

Victim Documentation [24 CFR 5.2007]

AHA Policy

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault or stalking, the AHA will

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

request in writing that the applicant provide documentation supporting the claim in accordance with section 16-IX.D of this plan.

Perpetrator Documentation

AHA Policy

If the perpetrator of the abuse is a member of the applicant family, the applicant must provide additional documentation consisting of one of the following:

- A signed statement: (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to stay as a guest in the assisted unit.
- Or provide documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

The term person with disabilities means a person who has any of the following types of conditions:

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:
  - Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
  - In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in 42 U.S.C. section 416(i)(1)), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
  - Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

A. In General

The term "developmental disability" means a severe, chronic disability of an individual that:

i. is attributable to a mental or physical impairment or combination of mental and physical impairments;

ii. is manifested before the individual attains age 22;

iii. is likely to continue indefinitely;
iv. results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care, (II) Receptive and expressive language, (III) Learning, (IV) Mobility, (V) Self-direction, (VI) Capacity for independent living, (VII) Economic self-sufficiency; and
v. reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

B. Infants and Young Children
An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

- Has a physical, mental, or emotional impairment that is expected to be of long continued and indefinite duration; substantially impedes his or her ability to live independently and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

Individual with Handicaps [24 CFR 8.3]
Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

1. Physical or mental impairment includes:
   (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

(b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

2. *Major life activities* means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
3. Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
4. *Is regarded as having an impairment means*:
   (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
   (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
   (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

EXHIBIT 3-2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION

[20 U.S.C. 1001 and 1002]
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice [Federal Register, April 10, 2006]
Institution of Higher Education shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.
Definition of ''Institution of Higher Education'' From 20 U.S.C. 1001

(a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' means an educational institution in any State that
   (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
   (2) Is legally authorized within such State to provide a program of education beyond secondary education;
   (3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
   (4) Is a public or other nonprofit institution; and
   (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

(b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ‘‘institution of higher education’’ also includes—
  (1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and
  (2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

Definition of ‘‘Institution of Higher Education’’ From 20 U.S.C. 1002

(a) Definition of institution of higher education for purposes of student assistance programs
  (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term ‘‘institution of higher education’’ for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
    A. A proprietary institution of higher education (as defined in subsection (b) of this section);
    B. A postsecondary vocational institution (as defined in subsection (c) of this section); and
    C. Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.
  (2) Institutions outside the United States
    A. In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—
      i. In the case of a graduate medical school located outside the United States—
        I.
          (a) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

(b) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

II. The institution has a clinical training program that was approved by a State as of January 1, 1992; or

ii. In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

B. Advisory panel

i. In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

I. Evaluate the standards of accreditation applied to applicant foreign medical schools; and

II. Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

ii. Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

C. Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

D. Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

A. Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

B. Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

C. Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate degree or a postsecondary diploma, respectively; or

D. Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

A. The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

B. The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(a) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term ''proprietary institution of higher education'' means a school that—

A. Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

B. Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

C. Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
D. Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
E. Has been in existence for at least 2 years; and
F. Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term ''proprietary institution of higher education'' also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(b) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term ''postsecondary vocational institution'' means a school that—
A. Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
B. Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and
C. Has been in existence for at least 2 years.

Additional institutions. The term ''postsecondary vocational institution'' also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 4 – APPLICATIONS, LOTTERY PROCESS & TENANT SELECTION

INTRODUCTION

When a family wishes to receive assistance under the HCV program, the family must submit an application that provides the AHA with the information needed to determine the family's eligibility. HUD requires the AHA to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the AHA must select families from the waiting list in accordance with HUD requirements and AHA policies as stated in the administrative plan and the annual plan.

The AHA is required to adopt clear policies and procedures for accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow these policies and procedures consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the AHA that justify their selection. Examples of this are the selection of families for income targeting and the selection of families that qualify for targeted funding.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that the AHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that the AHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and AHA policies for taking applications, managing the lottery process to create the waiting list, and selecting families for HCV assistance. The policies outlined in this chapter are organized into three sections, as follows:

Part I: The Application Process. This part provides an overview of the application process and discusses how applicants can obtain and submit applications. It also specifies how the PHA will handle the applications it receives.

Part II: Managing the Waiting List. This part presents the policies that govern how the PHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for assistance. It also discusses the process the PHA will use to keep the waiting list current.

Part III: Selection for HCV Assistance. This part describes the policies that guide the PHA in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that the PHA has the information needed to make a final eligibility determination.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

This part describes the AHA policies for making applications available, accepting applications making preliminary determinations of eligibility. This part also describes the AHA's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency (LEP).

4-I.B. APPLYING FOR ASSISTANCE

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the AHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by the AHA. The AHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the AHA's application.

AHA Policy

AHA will issue public notice that families may apply for the Housing Choice Voucher Program by publication in a local newspaper of general circulation and also minority media. The notice will comply with the Equal Opportunity plan and with HUD Fair Housing requirements. All persons who wish to apply for any of the AHA housing assistance programs are encouraged to register via the online registration system on the AHA website. Alternative registration methods will remain available to applicants with special needs.

A two-step process will be used for the application process. AHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility for application. The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.

The general public may submit their pre-application via the Internet. The address currently is www.abqha.org, and the web address may change from time to time. Free access to computers is available at multiple locations in the City of Albuquerque, including: the AHA main office located at 1840 University Blvd SE, all branches of the Albuquerque Public Library system and at City of Albuquerque Community Centers and Multi-Generational Centers. Instructions are printed in two languages (English and Spanish) and all forms must be filled out completely to be accepted for processing.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

Elderly and Disabled Populations [24 CFR 8 and HCV GB, pp. 4-11 – 4-13]

The AHA must take steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard AHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

English proficiency (LEP). The AHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or the AHA must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the AHA's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency
AHA is required to take reasonable steps to ensure equal access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion on the AHA's policies related to ensuring access to people with limited English proficiency (LEP).

4-I.D. PLACEMENT ON THE WAITING LIST

The AHA must review each complete application received and make a preliminary assessment of the family's eligibility. The AHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, the AHA must notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list [24 CFR 982.202(c)].

Ineligible for Placement on the Waiting List

AHA Policy
If AHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, AHA will send written notification of the ineligibility determination within 10 business days of receiving a complete application. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

Eligible for Placement on the Waiting List

AHA Policy
Pre-applications will be placed on the waiting list using the following method for the HCV program: Applicants will be placed on the waiting list using a lottery system. Once each application has been randomly assigned a number, the applications will be placed on the waiting list in order of the assigned numbers and according to AHA local preferences as described in Section 4-III.c.

Pre-applications will be placed on the waiting list using the following method for the PBV program and RAD PBV program: Applicants will be placed on the waiting list according to any project-based preference(s) for which they qualify, and the date and time their complete application is received by the AHA.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list.

PART II: MANAGING THE WAITLIST

4-II.A. OVERVIEW

The AHA must have policies regarding various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for assistance, as well as conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how a PHA may structure its waiting list and how families must be treated if they apply for assistance from a PHA that administers more than one assisted housing program.

4-II.B. ORGANIZATION OF THE WAITING LIST

[24 CFR 982.204 and 205]
The AHA's HCV waiting list must be organized in such a manner to allow AHA to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

The Housing Choice Voucher waiting list will contain the following information for each applicant listed:

(1) Applicant name;
(2) Family unit size (number of bedrooms for which family qualifies under PHA occupancy standards);
(3) Date and time of application;
(4) Qualification for any local preference;
(5) Racial or ethnic designation of the head of household.

HUD requires AHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such PHAs are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

AHA Policy
AHA will maintain a single waiting lists for tenant-based vouchers (HCV program)

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program the AHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

HUD permits, but does not require, that AHAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs.

A family's decision to apply for, receive, or refuse other housing assistance must not affect the family's placement on the HCV waiting list, or any preferences for which the family may qualify.

AHA Policy
The AHA will not merge the HCV waiting list with the waiting list for any other program the AHA operates.

4-II.C. OPENING & CLOSING THE WAITING LIST

[24 CFR 982.206]

Closing the Waiting List
The AHA is permitted to close the waiting list if it has an adequate pool of families to use its available HCV assistance. Alternatively, the AHA may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria.

AHA Policy
For the HCV program: The application period will be opened at least annually, depending on funding availability, and will be opened for a period of at least 30 calendar days during which time applications will be received through the online application process or other means as determined by AHA. Where AHA has particular preferences or funding criteria that require a specific category of family, AHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

For the PBV program and RAD PBV program: AHA will close the waiting list for any given property when the estimated waiting period for housing assistance for applicants on the list reaches 24 months for the most current applicants. The AHA may choose to continue to accept applications from families meeting certain criteria while closing the waiting list to others.

Reopening the Waiting List
If the waiting list has been closed, it cannot be reopened until the AHA publishes a notice in local newspapers of general circulation, minority media, and other suitable media outlets. The notice must comply with HUD fair housing requirements and must specify who may apply, and where and when applications will be received.

AHA Policy
For the HCV program
a. Any temporary closing and reopening of the waitlist will be done via the online application process and AHA lottery system.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

b. The application period for the waitlist will be opened at least annually, depending on funding availability. When AHA opens the Housing Choice Voucher application process, AHA will issue public notice that families may apply for the Housing Choice Voucher Program. AHA will issue a public notice by publication in a local newspaper of general circulation and also minority media. The notice will comply with the Equal Opportunity plan and with HUD Fair Housing requirements. As applicants are needed for the Housing Choice Voucher program, random drawings will occur from the application pool to create the waitlist. AHA will determine the number of applicants drawn based on need and funding availability.
c. The application period will be opened for at least 30 calendar days during which time applications will be received through the online application or other means as determined by the AHA.

For the PBV program and RAD PBV programs

The AHA will announce the reopening of the waiting list for any given property at least 10 days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice. The AHA will give public notice by publication in a local newspaper of general circulation and also minority media.

4-II.D. FAMILY OUTREACH

[HCV GB, pp. 4-2 to 4-4]
The AHA must conduct outreach as necessary to ensure that the AHA has a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted.

Because HUD requires the AHA to admit a specified percentage of extremely low-income families to the program (see Chapter 4, Part III), the AHA may need to conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

AHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class

AHA outreach efforts must be designed to inform qualified families about the availability of assistance under the program. These efforts may include, as needed, any of the following activities:

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low-income population

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities

AHA Policy
AHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in the AHA's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

The family should be required to notify the PHA when there are changes in the information provided on the application in order to allow the PHA to select families from the waiting list accurately and efficiently.

AHA Policy
When a family has submitted a pre-application, the family must immediately inform the AHA of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

4-II.F. UPDATING THE WAITING LIST

[24 CFR 982.204]
HUD requires the AHA to establish policies to use when removing applicant names from the waiting list.

Purging the Waiting List
The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to the AHA's request for information or updates, and the AHA determines that the family did not respond because of the family member's disability, the AHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)].

AHA Policy
For the HCV Program
On an annual basis, the Housing Choice Voucher program's application pool and waiting list are purged. All applicants who are not selected will have to re-apply to the HCV program during the next application period.

For the PBV program and RAD PBV programs
Wait lists for projects that are part of the AHA PBV program will be updated as needed to ensure that all applicants and applicant information is current and timely. To update the waiting list, the AHA will send an update request via first class mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that the AHA has on record for the family. The update request will provide a deadline by which the family must

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person, by mail, by email, or by fax. Responses should be postmarked or received by the AHA not later than 15 business days from the date of the AHA letter.

If the family fails to respond within 15 business days, the family will be removed from the waiting list without further notice.

If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 15 business days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the AHA may reinstate the family if it is determined that the lack of response was due to AHA error, or to circumstances beyond the family's control.

Removal from the Waiting List

AHA Policy
If at any time an applicant family is on the waiting list, and the AHA determines that the family is not eligible for assistance (see Chapter 3), the family will be removed from the waiting list.

If a family is removed from the waiting list because the AHA has determined the family is not eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding AHA's decision (see Chapter 16) [24 CFR 982.201(f)].

PART III: SELECTION FOR HCV ASSISTANCE

4-III.A. OVERVIEW

As vouchers become available, families must be selected for assistance in accordance with the policies described in this part.

The order in which families are selected depends on the selection method chosen by the PHA and is impacted in part by any selection preferences for which the family qualifies. The availability of targeted funding also may affect the order in which families are selected.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The PHA must maintain a clear record of all information required to verify that the family is selected according to the PHA's selection policies [24 CFR 982.204(b) and 982.207(e)].

4-III.B. SELECTION & HCV FUNDING SOURCES

Special Admissions [24 CFR 982.203]
HUD may award funding for specifically named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects). In these cases, the PHA may admit such families whether or not they are participating in the lottery process and, or if they are already participating in the lottery process without considering the family's selection. These families are considered non-lottery selections. The PHA must maintain records showing that such families were admitted with special program funding.

As part of its Voluntary Compliance Agreement (VCA) with HUD, AHA may also issue vouchers to AHA public housing residents who require the special features of an accessible unit and are unable to be accommodated with the present supply of AHA public housing. These vouchers must comply with the terms of the VCA. In these cases, the PHA may admit such families whether or not they are participating in the lottery process, or if they are already participating in the lottery process without considering the family's selection.

Targeted Funding [24 CFR 982.204(e)]
HUD may award a PHA funding for a specified category of families. The PHA must use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, the PHA may skip families that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

AHA Policy
AHA administers the following types of targeted funding:

NEAR ELDERLY DISABLED CATEGORY 1: Vouchers set aside for non-elderly disabled families to assist them in affordable housing. (Awarded April 1, 2010) Please see Chapter 20 of this Plan for regulations regarding application process.

NEAR ELDERLY DISABLED CATEGORY 2: Vouchers set aside for non-elderly disabled families transitioning from a skilled nursing facility. (Awarded October 1, 2010) Please see Chapter 20 of this Plan for regulations regarding application process.

SINGLE ROOM OCCUPANCY (SRO): Single Room Units Please see Chapter 15 of this Plan for regulations regarding the Section 8 SRO Program.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

FIVE YEAR MAINSTREAM: Vouchers Set-Aside for Elderly and Non-Elderly Disabled Please see Chapter 20 of this Plan for regulations regarding application process.

VETERANS AFFAIRS: (VASH) These vouchers are not included in the AHA HCV application process. Applicants are direct referrals from the U. S. Department of Veterans Affairs (VA). Please see Chapter 20 of this Plan for regulations regarding application process.

PROJECT BASED VOUCHERS (PBV): AHA Administers Project Based Vouchers at designated properties throughout the Albuquerque Area. These properties will be listed on the Online Application by street address and the form will list any unique eligibility requirements. Please see Chapters 17 and 18 of this Plan for regulations regarding application process.

Regular HCV Funding
Regular HCV funding may be used to assist any eligible family who participates in the lottery process. Families are selected through the application process according to the policies provided in Section 4-III.C.

4-III.C. SELECTION METHOD

PHAs must describe the method for selecting applicant families, including the system of admission preferences that the PHA will use [24 CFR 982.202(d)].

Local Preferences [24 CFR 982.207; HCV p. 4-16]
PHAs are permitted to establish local preferences, and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the AHA plan and the consolidated plan and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

AHA Policy
For the HCV program:

FIRST PREFERENCE (POOL): The AHA will offer first preference to any family that has been terminated from AHA's HCV program due to insufficient program funding.

SECOND PREFERENCE (POOL): AHA will strive to offer 125 vouchers per calendar year to participants the following populations:

- EHV Program eligible populations: homeless; at risk of homelessness; fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability. A preference will be given to individuals or

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking and/or individuals or families who are homeless.

- Individuals or families in transitional, rapid rehousing or permanent supportive housing programs that meet the following criteria will be eligible for this preference:
  (1) The supportive housing program serves people experiencing homelessness
  (2) The supportive housing program is located in the Albuquerque Housing Authority's (AHA) service area
  (3) The supportive housing program is willing to provide a letter to AHA verifying the resident is a participant and is willing to assist the applicant with the Housing Choice Voucher Program application process
  (4) If possible, the supportive housing program will make a good faith effort to provide or provide linkages to case management or comprehensive community support services to the participant for at least 3 months after the participant enters the Housing Choice Voucher Program
  (5) At least 20% of the supportive housing program budget comes from local, state or federal government funding.

Of the 125 vouchers targeted to these populations 68 of these vouchers will be Emergency Housing vouchers used to serve individuals or families who are (1) homeless; (2) at risk of homelessness; (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or (4) recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability. A preference will be given to individuals or families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking and/or individuals or families who are homeless.

Separate waitlists will be set up and maintained as follows:

- EHV Program applicants will be maintained as a separate waitlist that will give preference to individuals or families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking and/or individuals or families experiencing homelessness. Applicants for this waitlist are direct referrals from AHA's Continuum of Care partner.
- Eligible individuals or families in transitional, rapid rehousing or permanent supportive housing programs will have a separate waitlist

There will only be one lottery draw to set up the waiting list for "individuals or families in transitional, rapid rehousing or permanent supportive housing programs" per year. AHA will use present utilization data to make a selection from this supportive housing pre-application pool that best positions it to issue 57 vouchers to this population preference group.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Income Targeting Requirement [24 CFR 982.201(b)(2)]
HUD requires that extremely low-income (ELI) families make up at least 75 percent of the families admitted to the HCV program during the PHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30 percent of the area median income, whichever number is higher. To ensure this requirement is met, a PHA may skip non-ELI families who are selected through the lottery process in order to select an ELI family.

Low-income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

AHA Policy
AHA will monitor progress in meeting the income-targeting requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income-targeting requirement is met.

Order of Selection
The PHA system of preferences may select families based on local preferences by a random selection process (lottery) [24 CFR 982.207(c)]. If a PHA does not have enough funding to assist the family at the top of the waitlist, it is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

AHA Policy
For the HCV program
Families will be randomly selected from the application pool based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the AHA's hierarchy of preferences, if applicable and placed on the waiting list. If AHA does not have enough funding to assist the family at the top of the waitlist selected through the lottery, it will not skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list.

For the PBV program and RAD PBV program
For each property waitlist and within any project-based preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the AHA.

4-III.D. NOTIFICATION OF SELECTION

When a family has been selected from the waitlist the PHA must notify the family [24 CFR 982.554(a)].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
AHA will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family of the following:

- Date, time and location of the scheduled application interview, including any procedures for rescheduling the interview
- Who is required to attend the interview.
- What documents must be provided at the interview, including information about what constitutes acceptable documentation.

If a notification letter sent by first class U.S. mail is returned to the AHA by the U.S. Postal Service with no forwarding address, the family will be removed from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's address of record.

4-III.E. THE APPLICATION INTERVIEW

HUD recommends that the AHA obtain the information and documentation needed to make an eligibility determination though a face-to-face interview with an AHA representative [HCV GB, pg. 4-16]. Being invited to attend an interview does not constitute admission to the program.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the AHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on in the lottery pool for a period of time determined by the PHA [Notice PIH 2018-24].

Reasonable accommodation must be made for persons with disabilities who are unable to attend the interview in person at the office by appointment due to their disability.

AHA Policy
Families selected from the waiting list are required to participate in an eligibility interview.

The head of household and the spouse/co-head will be strongly encouraged to attend the interview together in person. However, either the head of household or the spouse/co-head may attend the interview on behalf of the family. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the AHA.

The head of household or spouse/co-head must provide acceptable documentation of legal identity. (Chapter 7 provides a discussion of proper documentation of legal identity.) If the family representative does not provide the required documentation at the time of the interview, he or she will be required to provide it within 10 business days. Pending disclosure and documentation of social security numbers, the AHA will allow the family to retain its place on the waiting list for 30 days. If not, all household members have disclosed their SSNs at the next time the AHA is issuing vouchers, the AHA will issue a voucher to the next eligible applicant family on the waiting list.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation. If any materials are missing, the AHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension, for up to 30 days. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (See Chapter 3).

An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

Interviews will be conducted in English. For limited English proficient (LEP) applicants, the AHA will provide translation services in accordance with the AHA's LEP plan.

If the family is unable to attend a scheduled interview the family should promptly contact the AHA in advance of the interview (preferably in writing) to request permission to schedule a new appointment date, time or location. If a family does not attend a scheduled interview, then the AHA will send another notification letter by U.S. mail with a final appointment date and time, unless the previous notice letter has already been returned to AHA by the U.S. Postal Service as not delivered. Applicants who fail to attend two scheduled interview without prior AHA approval in writing will be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

4-III.F. COMPLETING THE APPLICATION PROCESS

The AHA must verify all information provided by the family (see Chapter 7). Based on verified information, the AHA must make a final determination of eligibility (see Chapter 3) and must confirm that the family qualified for any special admission, targeted funding admission, or selection preference that affected the order in which the family was selected from the waiting list.

AHA Policy

If the AHA determines that the family is ineligible, the AHA will send written notification of the ineligibility determination. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal review (Chapter 16).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g., targeted funding, extremely low-income), the family will be

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

returned to the application pool. The AHA will notify the family in writing that it has been returned to the application pool and will specify the reasons for it.

If the AHA determines that the family is eligible to receive assistance, the AHA will invite the family to attend a briefing in accordance with the policies in Chapter 5.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 5 – BRIEFINGS & VOUCHER ISSUANCE

INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the AHA must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing the HUD-required documents and other information the family needs to know in order to lease a unit under the program. Once the family is fully informed of the program's requirements, the AHA issues the family a voucher. The voucher includes the unit size for which the family qualifies based on the AHA's subsidy standards, as well as the issue and expiration date of the voucher. The voucher is the document that authorizes the family to begin its search for a unit and limits the amount of time the family has to successfully locate an acceptable unit.

This chapter describes HUD regulations and AHA policies related to these topics in two parts:

Part I: Briefings and Family Obligations. This part details the program's requirements for briefing families orally, and for providing written materials describing the program and its requirements. It includes a particular focus on the family's obligations under the program.

Part II: Subsidy Standards and Voucher Issuance. This part discusses the AHA's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

PART I: BRIEFINGS & FAMILY OBLIGATIONS

5-I.A. OVERVIEW

HUD regulations require the AHA to conduct mandatory briefings for applicant families who qualify for a voucher. The briefing provides a broad description of owner and family responsibilities, explains the AHA's procedures, and includes instructions on how to lease a unit. This part describes how oral briefings will be conducted, specifies what written information will be provided to families, and lists the family's obligations under the program.

5-I.B. BRIEFING

[24 CFR 982.301]
Notification of Briefing
Prior to issuance of a voucher, the PHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed in individual face-to-face meetings, through group briefing sessions, or via remote briefing sessions.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
Families will be notified of their eligibility for assistance at the time they are invited to a briefing. The notice will be sent by first class mail and will also be sent by email if the family has provided a valid email address to the AHA.

The notice will advise the family of the type of briefing, who is required to be present at the briefing, and the date and time of the briefing. The notice will also inform the family of any additional requirements for in-person or remote briefings as addressed in relevant policy elsewhere in this section.

If the notice is returned by the post office with no forwarding address, the applicant will be denied, and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be resent to the address indicated.

In-Person Briefings
At the briefing, the PHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973) and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

AHA Policy
In-person briefings will generally be conducted in group meetings. At the family's written request, the PHA may provide an individual briefing.

Generally, the head of household is required to attend the briefing. If the head of household is unable to attend, the PHA may approve another adult family member to attend the briefing.

Families that attend group briefings and still need individual assistance will be referred to an appropriate AHA staff person.

Briefings will be conducted in English. For limited English proficient (LEP) applicants, the AHA will provide interpretation services in accordance with the AHA's LEP plan (See Chapter 2).

Attendance

AHA Policy
Applicants who fail to attend a scheduled in-person briefing will be scheduled for another briefing automatically. The PHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without prior AHA approval, will be denied assistance (see Chapter 3).

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Remote Briefings [Notice PIH 2020-32]
Remote briefings may be conducted over the phone, via video conferencing, or through other virtual platforms.

AHA Policy
AHA has the sole discretion to require that briefings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster. If AHA schedules a remote briefing, AHA will conduct a face-to-face briefing upon request of the applicant as a reasonable accommodation for a person with a disability if safety and health concerns can be reasonably addressed.

In addition, AHA will conduct a briefing remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have childcare or transportation that would enable them to attend the briefing, or if the applicant believes an in-person briefing would create an undue health risk. AHA will consider other reasonable requests for a remote briefing on a case-by-case basis.

Accessibility Requirements for Persons with Disabilities and LEP Individuals
As with in-person briefings, the platform for conducting remote briefings must be accessible and the briefing conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual.

If no method of conducting a remote briefing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote briefing, and the PHA should consider whether postponing the remote briefing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances.

Limited English Proficiency (LEP) requirements also apply to remote briefings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote briefings.

Conducting Remote Briefings
The PHA must ensure that the lack of technology or inability to use technology for remote briefings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA must ensure that the family has appropriate technological access in order to fully participate in the remote briefing.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
At least 10 business days prior to scheduling the remote briefing, AHA will provide written notification via first class mail and/or email to families participating in the briefing to advise of technological requirements and to request the family notify AHA of any known barriers. If any family does not respond within five business days, or if the written notification is returned by the post office or the email is rejected, AHA will contact the family by telephone to identify potential technological barriers and to determine which technology resources are accessible to the family. AHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person briefing or have a one-on-one briefing over the phone, as appropriate.

AHA will conduct remote briefings via a video conferencing platform when available. If applicants are unable to adequately access the video conferencing platform, the briefing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in, the remote briefing will be postponed, and an in-person alternative or one-on-one briefing over the phone will be provided.

AHA will provide login information and/or conferencing call-in information and an electronic copy of the briefing packet via email at least five business days before the briefing. AHA will provide a paper copy of the briefing packet upon family request and may reschedule the briefing to allow adequate time for the family to receive the physical briefing packet.

AHA will ensure that all electronic information stored or transmitted as part of the briefing meets the requirements for accessibility for persons with disabilities and persons with LEP, and is secure, including ensuring personally identifiable information (PII) is protected.

AHA will ensure that families who participate in remote briefings have the opportunity to ask questions as part of the briefing.

If families lose connectivity during any remote briefing or otherwise feel they were unable to access information presented during the briefing, the family may request a one-on-one briefing over the phone or in person with AHA.

Oral Briefing [24 CFR 982.301(a)]
Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside the AHA's jurisdiction;
- An explanation of how portability works. The AHA may not discourage the family from choosing to live anywhere in the AHA jurisdiction or outside the AHA jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- AHA must inform the family of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance;
- The advantages of areas that do not have a high concentration of low-income families; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

Briefing Packet [24 CFR 982.301(b)]

Documents and information provided in the briefing packet must include the following:

- The term of the voucher, voucher suspensions, and the AHA's policies on any extensions of the term. If the AHA allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how the AHA determines the payment standard for a family, how the AHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the AHA determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process that may affect the family's assistance.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of the AHA policy on providing information about families to prospective owners.
- AHA subsidy standards including when and how exceptions are made.
- Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides.
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
- A list of landlords known to the AHA who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to the AHA that may assist the family in locating a unit. AHAs must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the AHA.
- The grounds on which the AHA may terminate assistance for a participant family because of family action or failure to act.
- AHA informal hearing procedures including when the AHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- An explanation of the advantages of moving to an area that does not have a high concentration of low-income families.
- AHA is located in a metropolitan area, so the following additional information must be included in the briefing packet in order to receive full points under Section Eight Management Assessment Program (SEMAP) Indicator 7, Expanding Housing Opportunities [24 CFR 985.3(g)]:
    - Maps showing areas with housing opportunities outside areas of poverty or minority concentration, both within its jurisdiction and its neighboring jurisdiction
    - Information about the characteristics of these areas including job opportunities, schools, transportation, and other services
    - An explanation of how portability works, including a list of portability contact persons for neighboring PHAs with names, addresses, and telephone numbers

Additional Items to Be Included in the Briefing Packet

In addition to items required by the regulations, AHA may choose to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH 2017-12].

AHA Policy

AHA will provide the following additional materials in the briefing packet:

- The HUD pamphlet on lead-based paint entitled Protect Your Family from Lead in Your Home
- Information on how to fill out and file a housing discrimination complaint form
- The form HUD 5380 domestic violence certification form and the form HUD-5382 notice of occupancy rights, which contains information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking
- "Is Fraud Worth It?" (Form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse
- "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12

5-I.C. FAMILY OBLIGATIONS

Obligations of the family are described in the housing choice voucher (HCV) program regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. The AHA must inform families of these obligations during the oral briefing, and the same information must be included in the briefing packet. When the family's unit is approved and the HAP contract is executed, the family must meet those obligations in order to continue participating in the program. Violation of any family obligation may result in termination of assistance, as described in Chapter 12.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Time Frames for Reporting Changes Required By Family Obligations

AHA Policy
Unless otherwise noted below, when family obligations require the family to respond to a request or notify the AHA of a change, notifying the AHA of the request or change within 10 calendar days is considered prompt notice.

When a family is required to provide notice to the AHA, the notice must be in writing.

Family Obligations [24 CFR 982.551]
The family obligations of the voucher are listed as follows:

- The family must supply any information that the AHA or HUD determines to be necessary, including submission of required evidence of U.S. citizenship or eligible immigration status.
- The family must supply any information requested by the AHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

AHA Policy
Damages beyond normal wear and tear will be considered to be damages which could be assessed against the family's security deposit.

- The family must allow the AHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

AHA Policy
AHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to terminate the lease, police reports, and documents or statements from the owner, neighbors, or other credible parties with direct knowledge.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent or other amounts due under the lease, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and or criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The family must notify the AHA and the owner with proper written notification in accordance with New Mexico law before moving out of the unit or terminating the lease.

AHA Policy
The family must comply with lease requirements regarding providing advance written notice to the owner. The family must provide advance written notice to the AHA at the same time the owner is notified.

- The family must promptly give the AHA a copy of any eviction notice received from the owner or property manager.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- The composition of the assisted family residing in the unit must be approved by the AHA. The family must promptly notify the AHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request AHA approval to add any other family member as an occupant of the unit.

How and when families must request approval to add another family member:

AHA Policy
The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The AHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the AHA in writing if any family member no longer lives in the unit.
- If the AHA has given approval, a foster child or a live-in aide may reside in the unit. The AHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when AHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (sections I.K and I.M), and Chapter 11 (section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

What activities will be considered "subleasing" when the family continues to occupy the unit?

AHA Policy
Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the AHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the AHA when the family is absent from the unit.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Circumstances where families must report their absence from a unit to the PHA

AHA Policy
Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the AHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and AHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and AHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the AHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

PART II: SUBSIDY STANDARDS & VOUCHER ISSUANCE

5-II.A. OVERVIEW

The AHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive, and the policies that govern making exceptions to those standards. The AHA must also establish policies related to the issuance of the voucher, to the voucher term, and to any extensions of the voucher term.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE

[24 CFR 982.402]
For each family, the AHA determines the appropriate number of bedrooms under the AHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when the AHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by the AHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;
- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the AHA subsidy standards.

AHA Policy
AHA will assign one bedroom for the head of household/spouse or head/co-head, and one bedroom for every two additional household members, including permanent foster children, regardless of sex, age or relationship until the age of ten (10).

Effective July 1, 2019 for all new admissions and relocations:

- Children of separate genders age 10 or older will be allocated separate bedrooms.
- Live-in aides will be allocated a separate bedroom.
- Single person families will be allocated one bedroom.

AHA will reference the following chart in determining the appropriate voucher size for a family:

Voucher Size	Persons in Household (Minimum – Maximum)
1 Bedroom	1-2
2 Bedrooms	2-4
3 Bedrooms	3-6
4 Bedrooms	4-8
5 Bedrooms	6-10

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

In determining family unit size for a particular family, the AHA may grant an exception to its established subsidy standards if the AHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances [24 CFR 982.402(b)(8)]. Reasons may include, but are not limited to:

- A need for an additional bedroom for medical equipment
- A need for a separate bedroom for reasons related to a family member's disability, medical or health condition

For a single person who is not elderly, disabled, or a remaining family member, an exception cannot override the regulatory limit of a zero or one bedroom [24 CFR 982.402(b)(8)].

AHA Policy
AHA will consider granting an exception for any of the reasons specified in the regulation: the age, sex, health, handicap, or relationship of family members or other personal circumstances.

The family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger family unit size and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source (e.g., doctor or health care professional), unless the disability and the disability–related request for accommodation is readily apparent or otherwise known. The family's continued need for an additional bedroom due to special medical equipment must be re-verified at annual reexamination.

The AHA will notify the family of its determination in writing.

5-II.D. VOUCHER ISSUANCE

[24 CFR 982.302]
When a family is selected through the lottery process or when a participant family wants to move to another unit, the AHA issues a Housing Choice Voucher, form HUD-52646. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 10.

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that the AHA has determined the family to be eligible for the program, and that the AHA expects to have money available to subsidize the family if the family finds an approvable unit. However, the AHA does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any right to participate in the AHA's housing choice voucher program [Voucher, form HUD-52646]

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

A voucher can be issued to an applicant family only after the AHA has determined that the family is eligible for the program based on verification of information received within the 60 days prior to issuance [24 CFR 982.201(e)] and after the family has attended an oral briefing [HCV 8-1].

AHA Policy
Vouchers will be issued to eligible applicants immediately following the mandatory briefing.

AHA should have sufficient funds to house an applicant before issuing a voucher. If funds are insufficient to house the family, the AHA must wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10].

AHA Policy
Prior to issuing any vouchers, the AHA will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 16.

If AHA determines that there is insufficient funding after a voucher has been issued, the AHA may rescind the voucher and place the affected family back in the pool of selected lottery applicants.

5-II.E. VOUCHER TERM & EXTENSIONS

Voucher Term [24 CFR 982.303]
The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher [24 CFR 982.303(a)].

AHA Policy
The initial voucher term will be 60 calendar days.

The family must submit a Request For Tenancy Approval (RFTA) form and proposed lease agreement within the 60-day period unless the AHA grants an extension in writing.

Extensions of Voucher Term [24 CFR 982.303(b)]
The AHA has the authority to grant extensions of search time, to specify the length of an extension, and to determine the circumstances under which extensions will be granted. Discretionary policies related to extension and expiration of search time must be described in the AHA's administrative plan [24 CFR 982.54].

AHA must approve additional search time if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

The family must be notified in writing of the AHA's decision to approve or deny an extension. The AHA's decision to deny a request for an extension of the voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
AHA will automatically approve one extension for up to 120 days upon the written request from a household. If a written request is not possible and/or feasible, staff may consider reviewing a verbal request.

AHA will approve additional extensions only in the following circumstances:

- It is necessary as a reasonable accommodation for a person with disabilities.
- It is necessary due to reasons beyond the family's control, as determined by the AHA.

Following is a list of extenuating circumstances that the AHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:

- Serious illness or death in the family
- Other family emergency
- Obstacles due to employment
- Whether the family has already submitted requests for tenancy approval that were not approved by the AHA (example: proposed unit failed to pass an HQS inspection)
- Whether family size or other special circumstances make it difficult to find a suitable unit (example: seeking to rent a very large unit, or rent in specific school district or to rent a unit on a specific city bus line)
- Lack of affordable housing units

Any request for an additional extension must include the reason(s) an additional extension is necessary. The AHA may require the family to provide documentation to support the request or obtain verification from a qualified third party. AHA will work with requests from disabled households and their supporting agencies to ensure voucher holders have access to all possible housing options.

Requests for extensions to the voucher term must be made in writing submitted to the AHA. If a written request is not possible and/or feasible staff may review a verbal request. AHA will decide whether to approve or deny an extension request within 10 business days of the date the request is received and will immediately provide the family written notice of its decision.

The PHA will decide whether to approve or deny an extension request within 10 business days of the date the request is received and will immediately provide the family written notice of its decision.

Suspensions of Voucher Term [24 CFR 982.303(c)]
AHA must provide for suspension of the initial or any extended term of the voucher from the date the family submits a request for AHA approval of the tenancy (RFTA form) until the date the AHA notifies the family in writing whether the request has been approved or denied.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Expiration of Voucher Term

Once a family's housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program. If the family still wishes to receive assistance, the AHA may require that the family to re-enroll in the lottery process. Such a family does not become ineligible for the program on the grounds that it was unable to locate a unit before the voucher expired [HCV GB p. 8-13].

AHA Policy

If an applicant family's voucher term or extension expires before AHA has approved a tenancy, AHA will require the family to reapply for assistance.

Within 10 business days after the expiration of the voucher term or any extension, the AHA will notify the family in writing that the voucher term has expired and that the family must reapply when the waiting list is open in order to be placed on the waiting list.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 6 – INCOME & SUBSIDY DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 982]

INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the AHA's subsidy. The AHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and AHA policies related to these topics in three parts as follows:

Part I: Annual Income. HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and AHA policies for calculating annual income are found in Part I.

Part II: Adjusted Income. Once annual income has been established HUD regulations require the AHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and AHA policies for calculating adjusted income are found in Part II.

Part III: Calculating Family Share and AHA Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining AHA subsidy and required family payment.

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

The general regulatory definition of annual income shown below is from 24 CFR 5.609.

5.609 Annual income.

a) Annual income means all amounts, monetary or not, which:
(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
(3) Which are not specifically excluded in paragraph [5.609(c)].
(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Inclusions (Exhibit 6-1)
- Annual Income Exclusions (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-3)

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Earned Income Disallowance for Persons with Disabilities (Exhibit 6-4)
- The Effect of Welfare Benefit Reduction (Exhibit 6-5)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this plan, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

6-I.B. HOUSEHOLD COMPOSITION & INCOME

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c)(2)].
Head, spouse, or co-head Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or co-head)	Employment income above $480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

In the case of adding household members who are not designated as a live-in aide: the family must provide verifiable work history showing earned income for the last 12 months or other evidence of steady and continued income over the past 12 months (example: benefit payments) or a combination that covers the last 12 months.

Temporarily Absent Family Members

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

AHA Policy

Generally, an individual who is or is expected to be absent from the assisted unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally, an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Absent Students

AHA Policy
When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the AHA indicating that the student has established a separate household, or the family declares that the student has established a separate household.

Absences Due to Placement in Foster Care
Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

AHA Policy
If a child has been placed in foster care, the AHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

Absent Head, Spouse, or Cohead

AHA Policy
An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

Family Members Permanently Confined for Medical Reasons
If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

AHA Policy
AHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co-head qualifies as an elderly person or a person with disabilities.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Joint Custody of Dependents

AHA Policy
Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 35 percent or more of the time.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the AHA will make the determination based on available documents such as: court orders, school records, or a federal income tax return showing which family has claimed the child as a dependent for federal child income tax credit purposes, or school enrollment documentation listing the child's primary residence.

Caretakers for a Child

AHA Policy
The approval of a caretaker is at the owner and AHA's discretion and subject to the owner and AHA's screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the AHA will take the following actions.

- If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.
- If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases the AHA will extend the caretaker's status as an eligible visitor.
- At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.
- During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

6-I.C. ANTICIPATING ANNUAL INCOME

AHA is required to count all income "anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date" [24 CFR 5.609(a)(2)]. Policies related to anticipating annual income are provided below.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Basis of Annual Income Projection
AHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the AHA to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected [HCV GB, p. 5-17]
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income) [24 CFR 5.609(d)]
- The AHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

AHAs are required to use HUD's Enterprise Income Verification (EIV) system in its entirety as a third-party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2)].

HUD allows PHAs to use tenant-provided documents (pay stubs) to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where the AHA does not determine it is necessary to obtain additional third-party data.

AHA Policy
When EIV is obtained and the family does not dispute the EIV employer data, the AHA will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, the AHA will make every effort to obtain current and consecutive pay stubs dated within the last 60 days.

AHA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in Chapter 7 in the following cases:

- If EIV or other UIV data is not available,
- If the family disputes the accuracy of the EIV employer data, and/or
- If the AHA determines additional information is needed.

In such cases, the AHA will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the AHA annualized projected income.

When the AHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the AHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income such as most recent filed income tax returns, w-2's or 1099's etc.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the AHA to show why the historic pattern does not represent the family's anticipated income.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Known Changes in Income
If the AHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

> **Example:** An employer reports that a full-time employee who has been receiving $8/hour will begin to receive $8.25/hour in the eighth week after the effective date of the reexamination. In such a case the AHA would calculate annual income as follows:
> ($8/hour × 40 hours × 7 weeks) + ($8.25 × 40 hours × 45 weeks).

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the AHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the AHA's policy on reexaminations does not require interim reexaminations for other types of changes.

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within 60 days of the reexamination interview date.

Projecting Income
In HUD's EIV webcast of January 2008, HUD made clear that PHAs are not to use EIV quarterly wages to project annual income.

6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

Wages and Related Compensation
The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income [24 CFR 5.609(b)(1)].

> **AHA Policy**
> For persons who regularly receive bonuses or commissions, the AHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the AHA will use the prior year amounts. In either case the family may provide, and the AHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the AHA will count only the amount estimated by the employer. The file will be documented appropriately.

Some Types of Military Pay
All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Types of Earned Income Not Counted in Annual Income

Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)]
This type of income (including gifts) is not included in annual income. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than 180 days [Notice PIH 2009-19].

> **AHA Policy**
> Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

Children's Earnings
Employment income earned by children (including foster children) under the age of 18 years is not included in annual income [24 CFR 5.609(c)(1)]. (See Eligibility chapter for a definition of foster children.)

Certain Earned Income of Full-Time Students
Earnings in excess of $480 for each full-time student 18 years old or older (except for the head, spouse, or co-head) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

Income of a Live-in Aide
Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See Eligibility chapter for a full discussion of live-in aides.)

Income Earned under Certain Federal Programs
Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

Resident Service Stipend
Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed $200 per individual per month) received by a resident for performing a service for the AHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol,

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the AHA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

State and Local Employment Training Programs

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

AHA Policy

AHA defines training program as "a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period to time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency. Training may include but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education" [expired Notice PIH 98-2, p. 3].

AHA defines incremental earnings and benefits as the difference between: (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program, and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, the AHA will use as the pre-enrollment income the total annualized amount of the family member's welfare assistance and earnings reported on the family's most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the AHA's interim reporting requirements.

HUD-Funded Training Programs

Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

AHA Policy

To qualify as a training program, the program must meet the definition of training program provided above for state and local employment training programs.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Earned Income Tax Credit
Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

Earned Income Disallowance
The earned income disallowance for persons with disabilities is discussed in section 6-I.E below.

6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

[24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16]
The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 5.617 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

Eligibility
This disallowance applies only to individuals in families already participating in the HCV program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment. Previously unemployed includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF), or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least $500.

Calculation of the Disallowance
Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "baseline income." The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in the EID.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Calculation Method

Initial 12-Month Exclusion
During the initial exclusion period of 12 consecutive months, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded.

> **AHA Policy**
> The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

Second 12-Month Exclusion
During the second exclusion period of 12 consecutive months, the AHA must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

> **AHA Policy**
> During the second 12-month exclusion period, the AHA will exclude 50 percent of any increase in income attributable to new employment or increased earnings.

Lifetime Limitation
The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

6-I.F. BUSINESS INCOME

[24 CFR 5.609(b)(2)]
Annual income includes "the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family" [24 CFR 5.609(b)(2)].

Business Expenses
Net income is "gross income less business expense" [HCV GB, p. 5-19].

> **AHA Policy**
> To determine business expenses that may be deducted from gross income, the AHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Business Expansion
HUD regulations do not permit the AHA to deduct from gross income expenses for business expansion.

AHA Policy
Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

Capital Indebtedness
HUD regulations do not permit the AHA to deduct from gross income the amortization of capital indebtedness.

AHA Policy
Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the AHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

Negative Business Income
If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

Withdrawal of Cash or Assets from a Business
HUD regulations require the AHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

AHA Policy
Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of $2,000 to help a business get started, the AHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

Co-owned Businesses

AHA Policy
If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

6-I.G. ASSETS

[24 CFR 5.609(b)(3); 24 CFR 5.603(b)]

Overview

There is no asset limitation for participation in the HCV program. However, HUD requires that the AHA include in annual income the anticipated "interest, dividends, and other net income of any kind from real or personal property" [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the AHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)] and Exhibit 6-3 provides the regulatory definition of net family assets. This section begins with a discussion of general policies related to assets and then provides HUD rules and AHA policies related to each type of asset.

Optional policies for family self-certification of assets are found in Chapter 7.

General Policies

Income from Assets

The AHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes the AHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the AHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income, but the property is currently vacant, the AHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

> **AHA Policy**
> Anytime current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to the AHA to show why the asset income determination does not represent the family's anticipated asset income.

Valuing Assets

The calculation of asset income sometimes requires the AHA to make a distinction between an asset's market value and its cash value.

The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of an investment account).

The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28].

Lump-Sum Receipts
Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

Imputing Income from Assets [24 CFR 5.609(b)(3), Notice PIH 2012-29]
When net family assets are $5,000 or less, the AHA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of $5,000, the AHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by an average passbook savings rate as determined by the AHA.

- Note: The HUD field office no longer provides an interest rate for imputed asset income. The "safe harbor" is now for the AHA to establish a passbook rate within 0.75 percent of a national average.
- The AHA must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

AHA Policy
AHA initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).

AHA will review the passbook rate annually. The rate will not be adjusted unless the current AHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate.

The effective date of changes to the passbook rate will be determined at the time of the review.

Determining Actual Anticipated Income from Assets
It may or may not be necessary for the AHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

Withdrawal of Cash or Liquidation of Investments
Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement investment plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement investment plan.

Jointly Owned Assets
The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access."

> **AHA Policy**
> If an asset is owned by more than one person and any family member has unrestricted access to the asset, the AHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.
>
> If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the AHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the AHA will prorate the asset evenly among all owners.

Assets Disposed of for Less than Fair Market Value [24 CFR 5.603(b)]
HUD regulations require the AHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

Minimum Threshold
The HCV Guidebook permits the AHA to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

> **AHA Policy**
> AHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than $1,000.
>
> When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertification's, the family may request an interim recertification to eliminate consideration of the asset(s).
>
> Assets placed by the family in nonrevocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Separation or Divorce
The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

> **AHA Policy**
> All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

Foreclosure or Bankruptcy
Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

Family Declaration

> **AHA Policy**
> Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The AHA may verify the value of the assets disposed of if other information available to the AHA does not appear to agree with the information reported by the family.

Types of Assets

Checking and Savings Accounts
For regular checking accounts and savings accounts, cash value has the same meaning as market value. If a checking account does not bear interest, the anticipated income from the account is zero.

> **AHA Policy**
> In determining the value of checking account and savings account, the AHA will use the current balance.
>
> In determining the anticipated income from an interest-bearing checking or savings account, the AHA will multiply the value of the account by the current rate of interest paid on the account.

Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds
Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
In determining the market value of an investment account, the AHA will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known.

For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings).

When the anticipated rate of return is not known (e.g., stocks), the AHA will calculate asset income based on the earnings for the most recent reporting period.

Equity in Real Property or Other Capital Investments
Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25].

AHA Policy
In determining the equity, the AHA will determine market value by examining market data (online or through a broker) for least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value.

AHA will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, the AHA will use the basic loan balance information to deduct from the market value in the equity calculation.

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- Equity accounts in HUD homeownership programs [24 CFR5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b), Notice PIH 2012-3]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

AHA must also deduct from the equity the reasonable costs for converting the asset to cash. Using the formula for calculating equity specified above, the net cash value of real property is

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

the market value of the loan (mortgage) minus the expenses to convert to cash [Notice PIH 2012-3].

AHA Policy
For the purposes of calculating expenses to convert to cash for real property, the AHA will use ten percent of the market value of the home.

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

AHA Policy
In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless the AHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

Trusts
A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

Revocable Trusts
If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

Non-revocable Trusts
In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Retirement Accounts

Company Retirement/Pension Accounts
In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the AHA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

IRA, Keogh, and Similar Retirement Savings Accounts
IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

Personal Property
Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

> **AHA Policy**
> In determining the value of personal property held as an investment, the AHA will use the family's estimate of the value. The AHA may obtain an appraisal to confirm the value of the asset if there is reason to believe that the family's estimated value is off by $50 or more. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.
>
> Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

> **AHA Policy**
> Necessary personal property consists of only those items not held as an investment, and may include clothing, furniture, household furnishings, jewelry, and vehicles, including those specially equipped for persons with disabilities.

Life Insurance
The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

6-I.H. PERIODIC PAYMENTS

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

Periodic Payments Included in Annual Income

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14].

Lump-Sum Payments for the Delayed Start of a Periodic Payment

Most lump-sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income. Additionally, any deferred disability benefits that are received in a lump-sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [24 CFR 5.609(c)(14)].

> **AHA Policy**
> When a delayed-start payment is received and reported during the period in which the AHA is processing an annual reexamination, the AHA will adjust the family share and AHA subsidy retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the AHA.

Treatment of Overpayment Deductions from Social Security Benefits

The AHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the AHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2018-24].

Periodic Payments Excluded from Annual Income

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship guardianship assistance payments (Kin-GAP) and other similar

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2012-1].

AHA Policy
AHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)].
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)].
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)].
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. Note: EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump-sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.H.) [24 CFR 5.609(c)(14)].
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [24 CFR 5.609(c)(14)].

6-I.I. PAYMENTS IN LIEU OF EARNINGS

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

6-I.J. WELFARE ASSISTANCE

Overview
Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615]
The AHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

Covered Families
The families covered by 24 CFR 5.615 are those "who receive welfare assistance or other public assistance benefits ('welfare benefits') from a State or other public agency ('welfare agency') under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance" [24 CFR 5.615(b)].

Imputed Income
When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the AHA must include in annual income "imputed" welfare income. The AHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

Offsets
The amount of the imputed welfare income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

6-I.K. PERIODIC & DETERMINABLE ALLOWANCES

[24 CFR 5.609(b)(7)]
Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with an assisted family.

Alimony and Child Support
AHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

> **AHA Policy**
> AHA will count court-awarded amounts for alimony and child support unless the AHA verifies that: (1) the payments are not being made, and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

Regular Contributions or Gifts

The AHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with an assisted family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

AHA Policy

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by the AHA. For contributions that may vary from month to month (e.g., utility payments), the AHA will include an average amount based upon past history.

6-I.L. STUDENT FINANCIAL ASSISTANCE

[24 CFR 5.609(b)(9); Notice PIH 2015-21]

In 2005, Congress passed a law (for Section 8 programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. For some students, the full exclusion still applies.

Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9); FR 4/10/06; Notice PIH 2015-21]

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age OR they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition and any other required fees and charges received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, the AHA will use the definitions of dependent child, institution of higher education, and parents in section 3-II.E, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Assistance under the Higher Education Act of 1965 includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- Assistance from private sources means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- Tuition and fees are defined in the same manner in which the Department of Education defines tuition and fees [Notice PIH 2015-21].
    - This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
    - The amount represents what a typical student would be charged and may not be the same for all students at an institution.
    - If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.
    - Required fees include all fixed-sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).
    - Expenses related to attending an institution of higher education must not be included as tuition. Examples include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed-sum charges.
    - Student Financial Assistance Excluded from Annual Income [24 CFR 5.609(c)(6)]
    - Any student financial assistance not subject to inclusion under 24 CFR 5.609(b)(9) is fully excluded from annual income under 24 CFR 5.609(c)(6), whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:
        - Students residing with parents who are seeking or receiving Section 8 assistance
        - Students who are enrolled in an educational institution that does not meet the 1965 HEA definition of institution of higher education
        - Students who are over 23 AND have at least one dependent child, as defined in section 3 II.E
        - Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of $480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17), FR Notice 5/20/14]. HUD publishes an updated list of these exclusions periodically. It includes:
    a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
    b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
    c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
    d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
    e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
    f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
    g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
    h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
    i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
    j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
    k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled Elouise Cobell et al. v. Ken Salazar et al., for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
    l) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
    m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
    n) -Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
r) The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249) (See Section 6-I.L. for exceptions.)
v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002
y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013–30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))
z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations
aa) Distributions from an ABLE account and actual or imputed interest on the ABLE account balance.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview
HUD regulations require AHAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity [AHA] must deduct the following amounts from annual income:
(1) $480 for each dependent;
(2) $400 for any elderly family or disabled family;
(3) The sum of the following, to the extent the sum exceeds three percent of annual income:
(i) Unreimbursed medical expenses of any elderly family or disabled family;
(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7.

Anticipating Expenses

AHA Policy
Generally, the AHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., childcare during school and non-school periods and cyclical medical expenses), the AHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, the AHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The AHA may require the family to provide documentation of payments made in the preceding year.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

6-II.B. DEPENDENT DEDUCTION

An allowance of $480 is deducted from annual income for each dependent [24 CFR 5.611(a)(1)]. Dependent is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of $400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An elderly family is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a disabled family is a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403].

6-II.D. MEDICAL EXPENSES DEDUCTION

[24 CFR 5.611(a)(3)(i)]
Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income.

The medical expense deduction is permitted only for families in which the head, spouse, or cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

Definition of Medical Expenses
HUD regulations define medical expenses at 24 CFR 5.603(b) to mean "medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance."

AHA Policy
The most current IRS Publication 502, Medical and Dental Expenses, will be used as a reference to determine the costs that qualify as medical expenses.

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals Surgery and medical procedures that are necessary, legal, non-cosmetic Services of medical facilities Hospitalization, long-term care, and in-home nursing services Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails)	Substance abuse treatment programs Psychiatric treatment Ambulance services and some costs of transportation related to medical expenses The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) Cost and continuing care of necessary service animals

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

	Medical insurance premiums or the cost of a health maintenance organization (HMO)
Note: This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.	

Families That Qualify for Both Medical and Disability Assistance Expenses

AHA Policy
This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the AHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION

[24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]
Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

Earned Income Limit on the Disability Assistance Expense Deduction
A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of "earned income received by family members who are 18 years of age or older and who are able to work" because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

AHA Policy
The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family's request, the AHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the AHA determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members' incomes.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Eligible Disability Expenses
Examples of auxiliary apparatus are provided in the HCV Guidebook as follows: "Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work" [HCV GB, p. 5-30].

HUD advises AHAs to further define and describe auxiliary apparatus [VG, p. 30].

Eligible Auxiliary Apparatus

AHA Policy
Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost-of-service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

Eligible Attendant Care
The family determines the type of attendant care that is appropriate for the person with disabilities.

AHA Policy
Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, the AHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Payments to Family Members
No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Necessary and Reasonable Expenses
The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

AHA Policy
AHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the AHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the AHA will consider, the family's justification for costs that exceed typical costs in the area.

Families That Qualify for Both Medical and Disability Assistance Expenses

AHA Policy
This policy applies only to families in which the head or spouse is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the AHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6-II.F. CHILD CARE EXPENSE DEDUCTION

HUD defines *childcare expenses* at 24 CFR 5.603(b) as "amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for childcare. In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income."

Clarifying the Meaning of Child for This Deduction
Childcare expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household [VG, p. 26]. However, childcare expenses for foster children that are living in the assisted family's household are included when determining the family's child care expenses [HCV GB, p. 5-29].

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

AHA Policy
The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

eligible for a childcare deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family's request, the AHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

AHA Policy
If the childcare expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the childcare expense being allowed by the AHA.

Furthering Education

AHA Policy
If the childcare expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the childcare claimed.

Being Gainfully Employed

AHA Policy
If the childcare expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

Earned Income Limit on Child Care Expense Deduction
When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for childcare – although the care must still be necessary and reasonable. However, when childcare enables a family member to work, the deduction is capped by "the amount of employment income that is included in annual income" [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above $480 is excluded,

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

childcare costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes $15,000 but because of the EID only $5,000 is included in annual income, childcare expenses are limited to $5,000.

The AHA must not limit the deduction to the least expensive type of childcare. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

AHA Policy
When the childcare expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the AHA generally will limit allowable childcare expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

Eligible Child Care Expenses
The type of care to be provided is determined by the assisted family. The AHA may not refuse to give a family the childcare expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

Allowable Child Care Activities

AHA Policy
For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of childcare.

The costs of general housekeeping and personal services are not eligible. Likewise, childcare expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.

If a childcare provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the AHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the childcare provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Necessary and Reasonable Costs
Childcare expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education,

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

AHA Policy
Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For childcare that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of childcare costs, the AHA will use the schedule of child care costs from a qualified local entity that either subsidizes child care costs or licenses child care providers. Families may present, and the AHA will consider, justification for costs that exceed typical costs in the area.

PART III: CALCULATING FAMILY SHARE & AHA SUBSIDY

6-III.A. OVERVIEW OF RENT & SUBSIDY CALCULATIONS

TTP Formula [24 CFR 5.628]
HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between $0 and $50 that is established by the AHA

The AHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

Welfare Rent [24 CFR 5.628]

AHA Policy
Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]

AHA Policy
The minimum rent for this locality is $50.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Family Share [24 CFR 982.305(a)(5)]
If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the AHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the AHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

AHA Subsidy [24 CFR 982.505(b)]
AHA will pay a monthly housing assistance payment (HAP) for a family that is equal to the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP. (For a discussion of the application of payment standards, see section 6-III.C.)

Utility Reimbursement [24 CFR 982.514(b); 982.514(c)]
When the AHA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits the AHA to pay the reimbursement to the family or directly to the utility provider.

AHA Policy
AHA will make utility reimbursements to the family.

AHA may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is $15.00 or less. Reimbursements must be made once per calendar-year quarter and must be prorated if the family leaves the program in advance of its next quarterly reimbursement. The AHA must also adopt hardship policies for families for whom receiving quarterly reimbursement would create a financial hardship.

AHA Policy
AHA will issue all utility reimbursements monthly.

6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT

[24 CFR 5.630]

AHA Policy
AHA has established a minimum rent of $50.

Overview
If the AHA establishes a minimum rent greater than zero, the AHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the AHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

(1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

AHA Policy

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following: (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

(2) The family would be evicted because it is unable to pay the minimum rent.

AHA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.

(3) Family income has decreased because of changed family circumstances, including the loss of employment.

(4) A death has occurred in the family.

AHA Policy

In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).

(5) The family has experienced other circumstances determined by the AHA.

AHA Policy

AHA has not established any additional hardship criteria.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Implementation of Hardship Exemption

Determination of Hardship
When a family requests a financial hardship exemption, the AHA must suspend the minimum rent requirement beginning the first of the month following the family's request.

The AHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

> **AHA Policy**
> AHA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

Example: Impact of Minimum Rent Exemption Assume the AHA has established a minimum rent of 50.			
Family Share – No Hardship		**Family Share – With Hardship**	
$0	30% of monthly adjusted income	$0	30% of monthly adjusted income
$15	10% of monthly gross income	$15	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent
$50	Minimum rent	$50	Minimum rent
Minimum rent applies. TTP = $50		Hardship exemption granted. TTP = $15	

> **AHA Policy**
> To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.
>
> AHA will make the determination of hardship within 30 calendar days.

No Financial Hardship
If the AHA determines there is no financial hardship, the AHA will reinstate the minimum rent and require the family to repay the amounts suspended.

> **AHA Policy**
> AHA will require the family to repay the suspended amount within 30 calendar days of the AHA's notice that a hardship exemption has not been granted.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Temporary Hardship
If the AHA determines that a qualifying financial hardship is temporary, the AHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay the AHA the amounts suspended. HUD requires the AHA to offer a reasonable repayment agreement, on terms and conditions established by the AHA. The AHA also may determine that circumstances have changed, and the hardship is now a long-term hardship.

AHA Policy
AHA will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

Long-Term Hardship
If the AHA determines that the financial hardship is long-term, the AHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

AHA Policy
The hardship period ends when any of the following circumstances apply:
(1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
(2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a $60/month child support payment, the hardship will continue to exist until the family receives at least $60/month in income from another source or once again begins to receive the child support.
(3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

6-III.C. APPLYING PAYMENT STANDARDS

[24 CFR 982.505; 982.503(b)]
Overview
The AHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the AHA's payment standards. The establishment and revision of the AHA's payment standard schedule are covered in Chapter 16.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Payment standard is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the AHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If the AHA has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, the AHA must use the appropriate payment standard for the exception area.

The AHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, the AHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

Changes in Payment Standards
When the AHA revises its payment standards during the term of the HAP contract for a family's unit, it will apply the new payment standards in accordance with HUD regulations.

Decreases
If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard generally will be used beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard. The AHA will determine the payment standard for the family as follows:

> **Step 1**: At the first regular reexamination following the decrease in the payment standard, the AHA will determine the payment standard for the family using the lower of the payment standard for the family unit size or the size of the dwelling unit rented by the family.
>
> **Step 2**: The AHA will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by the AHA at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. The AHA will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.
>
> **Step 3:** At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

assistance payment for the family unless the AHA has subsequently increased the payment standard, in which case the payment standard will be determined in accordance with procedures for increases in payment standards described below.

Increases
If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination [HCV GB, p. 7-8].

Changes in Family Unit Size (Voucher Size)
Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first regular reexamination following the change in family unit size.

Reasonable Accommodation
If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the AHA is allowed to establish a higher payment standard for the family of not more than 120 percent of the published FMR.

6-III.D. APPLYING UTILITY ALLOWANCES

[24 CFR 982.517]
Overview
AHA-established utility allowance schedule is used in determining family share and AHA subsidy. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using AHA subsidy standards, whichever is the lowest of the two. See Chapter 5 for information on the AHA's subsidy standards.

For policies on establishing and updating utility allowances, see Chapter 16.

Reasonable Accommodation
HCV program regulations require AHA to approve a utility allowance amount higher than shown on the AHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the AHA will approve an allowance for air-conditioning, even if the AHA has determined that an allowance for air-conditioning generally is not needed.
The family must request the higher allowance and provide the AHA with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Utility Allowance Revisions
At reexamination, the AHA must use the current utility allowance schedule [HCV GB, p. 18-8].

AHA Policy
Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is processed after the allowance is adopted.

6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES

[24 CFR 5.520]
HUD regulations prohibit assistance to ineligible family members. A mixed family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The AHA must prorate the assistance provided to a mixed family. The AHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the AHA subsidy for a family is calculated at $500 and two of four family members are ineligible, the AHA subsidy would be reduced to $250.

EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

(a) Annual income means all amounts, monetary or not, which:
(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
(3) Which are not specifically excluded in paragraph (c) of this section.
(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.
(b) Annual income includes, but is not limited to:
(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
(6) Welfare assistance payments.
(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and
(B) Are not otherwise excluded under paragraph (c) of this section.
(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)
(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, “financial assistance” does not include loan proceeds for the purpose of determining income.

HHS DEFINITION OF "ASSISTANCE"
45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES
260.31 What does the term “assistance” mean?
(a)(1) The term “assistance” includes cash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).
(2) It includes such benefits even when they are:

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and
(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).
(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and childcare provided to families who are not employed.
(b) [The definition of "assistance"] excludes: (1) Nonrecurrent, short-term benefits that:
(i) Are designed to deal with a specific crisis situation or episode of need;
(ii) Are not intended to meet recurrent or ongoing needs; and
(iii) Will not extend beyond four months.
(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
(3) Supportive services such as childcare and transportation provided to families who are employed;
(4) Refundable earned income tax credits;
(5) Contributions to, and distributions from, Individual Development Accounts;
(6) Services such as counseling, case management, peer support, childcare information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and
(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609
(c) Annual income does not include the following:
(1) Income from employment of children (including foster children) under the age of 18 years;
(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
(5) Income of a live-in aide, as defined in Sec. 5.403;
(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
(8) (i) Amounts received under training programs funded by HUD;
(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing,

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

transportation, childcare, etc.) and which are made solely to allow participation in a specific program;
(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the AHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the AHA's governing board. No resident may receive more than one such stipend during the same period of time;
(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
(9) Temporary, nonrecurring or sporadic income (including gifts);
(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);
(12) Adoption assistance payments in excess of $480 per adopted child;
(13) [Reserved]
(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or prospective monthly amounts.
(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to AHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See Section 6 I.M. for a list of benefits that qualify for this exclusion.]

EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets
(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.
(3) In determining net family assets, AHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.
(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

24 CFR 5.617 Self-sufficiency incentives for persons with disabilities–Disallowance of increase in annual income.
(a) Applicable programs. The disallowance of earned income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).
(b) Definitions. The following definitions apply for purposes of this section.
Baseline income. The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person with disabilities (who is a member of a qualified family).
Disallowance. Exclusion from annual income.
Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.
Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.
(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;
(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or
(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least $500.
(c) Disallowance of increase in annual income—
(1) Initial twelve-month exclusion. During the 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.
(2) Second twelve-month exclusion and AHA in. Upon expiration of the 12-month period defined in paragraph (c)(1) of this section and for the subsequent 12-month period, the responsible entity must exclude from annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.
(3) Maximum 2-year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) of this section is limited to a lifetime 24-month period. The disallowance applies for a maximum of 12 months for disallowance under paragraph (c)(1) of this section and a maximum of 12 months for disallowance under paragraph (c)(2) of this section, during the 24- month period starting from the initial exclusion under paragraph (c)(1) of this section.
(4) Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date (see 24 CFR parts 0 to 199, revised as of April 1, 2016).
(d) Inapplicability to admission. The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615
Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.
(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).
(b) Definitions. The following definitions apply for purposes of this section:
Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.
Economic self-sufficiency program. See definition at Sec. 5.603.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.
Specified welfare benefit reduction.
(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.
(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:
(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or
(iii) because a family member has not complied with other welfare agency requirements.
(c) Imputed welfare income.
(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the AHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.
(2) At the request of the AHA, the welfare agency will inform the AHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the AHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The AHA will use this information to determine the amount of imputed welfare income for a family.
(3) A family's annual income includes imputed welfare income in family annual income, as determined at the AHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the AHA by the welfare agency).
(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed
(5) The AHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.
(d) Review of AHA decision.
(1) Public housing. If a public housing tenant claims that the AHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the AHA denies the family's request to modify such amount, the AHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the AHA determination of the amount of imputed welfare income. The AHA notice shall also state that if the tenant does not agree with the AHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the AHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the AHA determination.
(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the AHA determination of the amount of imputed welfare income that must be included in the family's

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the AHA denies the family's request to modify such amount, the AHA shall give the family written notice of such denial, with a brief explanation of the basis for the AHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the AHA determination, the family may request an informal hearing on the determination under the AHA hearing procedure.

(e) AHA relation with welfare agency.

(1) The AHA must ask welfare agencies to inform the AHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the AHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The AHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency and specified in the notice by the welfare agency to the AHA. However, the AHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The AHA shall be entitled to rely on the welfare agency notice to the AHA of the welfare agency's determination of a specified welfare benefits reduction.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 7 – VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH 2018-18]

INTRODUCTION

The AHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The AHA must not pass on the cost of verification to the family.

The AHA will follow the verification guidance provided by HUD in Notice PIH 2018-18 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary AHA policies.

Part I describes the general verification process.

Part II provides more detailed requirements related to family information.

Part III provides information on income and assets, and Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the AHA.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION

[24 CFR 982.516 AND 982.551, 24 CFR 5.230]
The family must supply any information that the AHA or HUD determines is necessary to the administration of the program and must consent to AHA verification of that information [24 CFR 982.551].

Consent Forms
It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the AHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Penalties for Failing to Consent [24 CFR 5.232]
If any family member who is required to sign a consent form fails to do so, the AHA will deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with AHA procedures.

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy [Notice PIH - 2018-18]
HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the AHA to use the most reliable form of verification that is available and to document the reasons when the AHA uses a lesser form of verification.

In order of priority, the forms of verification that the AHA will use are:

- Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Up-front Income Verification (UIV) using a non-HUD system
- Written Third-Party Verification (may be provided by applicant or participant)
- Written Third-party Verification Form
- Oral Third-party Verification
- Self-Certification

Each of the verification methods is discussed in subsequent sections below.

Requirements for Acceptable Documents

AHA Policy
Any documents used for verification generally must be dated within 60 days of the interview date. The documents must not be damaged, altered or in any way illegible. Copies (including scanned and emailed) documents are acceptable provided they show no sign of alteration or fabrication.

Printouts from Web pages are considered original documents.

Any family self-certifications must be made in a format acceptable to the AHA.

File Documentation
The AHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the AHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
AHA will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing adjusted income

When the AHA is unable to obtain third-party verification, the AHA will document in the family file the reason that third-party verification was not available [24 CFR 982.516(a)(2); Notice PIH 2018-18.

7-I.C. UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to the AHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the AHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the AHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of the AHA.

See Chapter 6 for the AHA's policy on the use of UIV/EIV to project annual income.

Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)
AHA must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertification's of family composition and income in accordance with 24 CFR 5.236 and administrative guidance issued by HUD. The EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. The following policies apply to the use of HUD's EIV system.

EIV Income and IVT Reports
The data shown on income and income validation tool (IVT) reports is updated quarterly. Data may be between 3 and 6 months old at the time reports are generated.

AHA Policy
AHA will obtain income reports and IVT annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income and IVT reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6-I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6-I.C. and in this chapter.

Income and IVT reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

Income and IVT reports will be retained in participant files with the applicable annual or interim reexamination documents.

When the AHA determines through EIV reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

EIV Identity Verification

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on social security number, name, and date of birth.

AHAs are required to use EIV's Identity Verification Report on a monthly basis to improve the availability of income information in EIV [Notice PIH 2018-18].

When identity verification for a participant fails, a message will be displayed within the EIV system, and no income information will be displayed.

AHA Policy

AHA will identify participants whose identity verification has failed by reviewing EIV's Identity Verification Report on a monthly basis.

AHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When the AHA determines that discrepancies exist due to AHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

Upfront Income Verification Using Non-HUD Systems (Optional)

In addition to mandatory use of the EIV system, HUD encourages AHAs to utilize other upfront verification sources.

AHA Policy

AHA will inform all applicants and participants of its use of the following UIV resources during the admission and reexamination process:

- HUD's EIV system
- The Work Number
- Credit Reports as needed for verification activities

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

7-I.D. THIRD-PARTY WRITTEN & ORAL VERIFICATION

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to the AHA by the family. If written third-party verification is not available, the AHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

Written Third-Party Verification [Notice PIH 2018-18]
Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

The AHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

The AHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

> **AHA Policy**
> Third-party documents provided by the family must be dated within 60 days of the interview date.
>
> If the AHA determines that third-party documents provided by the family are not acceptable, the AHA will explain the reason to the family and request additional documentation.
>
> As verification of earned income, the AHA will require the family to provide the two most current, consecutive pay stubs if the family member is paid bi-weekly. Four such paystubs are required if a family member is paid weekly. At the PHA's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), the PHA may request additional paystubs or a payroll record.

Written Third-Party Verification Form
When upfront verification is not available and the family is unable to provide written third-party documents, the AHA must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

PHAs may mail, fax, or email third-party written verification form requests to third-party sources.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
AHA will send third-party verification forms directly to the third party.

Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by the AHA.

Oral Third-Party Verification [Notice PIH 2018-18]
For third-party oral verification, AHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

AHAs should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

AHA Policy
In collecting third-party oral verification, AHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification the AHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

When Third-Party Verification is Not Required [Notice PIH 2018-18]
Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

AHA Policy
If the family cannot provide original documents, the AHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

Primary Documents
Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Imputed Assets
HUD permits AHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

> **AHA Policy**
> AHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

Value of Assets and Asset Income [24 CFR 982.516(a)]
For families with net assets totaling $5,000 or less, the AHA may accept the family's declaration of asset value and anticipated asset income. However, the AHA is required to obtain third-party verification of all assets regardless of the amount during the intake process and at least every three years thereafter.

> **AHA Policy**
> For families with net assets totaling $5,000 or less, the AHA will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration.
>
> AHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.

7-I.E. SELF-CERTIFICATION

When HUD requires third-party verification, self-certification or "tenant declaration," is used as a last resort when the AHA is unable to obtain third-party verification.

Self-certification, however, is an acceptable form of verification when:
- A source of income is fully excluded
  - Net family assets total $5,000 or less and the AHA has adopted a policy to accept self-certification at annual recertification, when applicable
  - The AHA has adopted a policy to implement streamlined annual recertification's for fixed sources of income (See Chapter 11)

When the AHA was required to obtain third-party verification but instead relies on a tenant declaration for verification of income, assets, or expenses, the family's file must be documented to explain why third-party verification was not available.

> **AHA Policy**
> When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the AHA.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the AHA and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of an AHA representative or notary public.

PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

AHA Policy
AHA will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicles identification card U.S. military discharge (DD 214) Current U.S. passport Current government employer identification card with picture	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified school records

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the AHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the AHA and be signed in the presence of an AHA representative or AHA notary public.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the AHA has reason to doubt the identity of a person representing him or herself to be a participant.

7-II.B. SOCIAL SECURITY NUMBERS

[24 CFR 5.216, Notice PIH 2018-24]
The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

The AHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

The AHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document or if the original document has been altered, mutilated, is illegible, or appears to be forged.

AHA Policy
AHA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the AHA within 90 days.

In the case of Moderate Rehabilitation Single Room Occupancy (SRO) individuals, the required documentation must be provided within 90 calendar days from the date of admission into the program. The AHA must grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen.

AHA Policy
AHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the AHA will terminate the individual's assistance.

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if the AHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

AHA Policy
AHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

When a participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The AHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the AHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the AHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

AHA Policy
The AHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously assisted occupancy.

AHA Policy
The AHA will verify each disclosed SSN by:

- Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers
- Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

Once the individual's verification status is classified as "verified," the AHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

AHA Policy
Once an individual's status is classified as "verified" in HUD's EIV system, the AHA will remove and destroy copies of documentation accepted as evidence of social security numbers.

7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
If an official record of birth or evidence of social security retirement benefits cannot be provided, the AHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

AHA Policy
Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage

AHA Policy
Certification by the head of household is normally sufficient verification. If the AHA has reasonable doubts about a marital relationship, the AHA will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

Separation or Divorce

AHA Policy
Certification by the head of household is normally sufficient verification. If the AHA has reasonable doubts about a separation or divorce, the AHA will require the family to provide documentation of the divorce or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

AHA Policy
If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

Foster Children and Foster Adults

AHA Policy
Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7-II.E. VERIFICATION OF STUDENT STATUS

General Requirements

AHA Policy
The AHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or cohead
- The family reports childcare expenses to enable a family member to further his or her education
- The family includes a student enrolled in an institution of higher education

Restrictions on Assistance to Students Enrolled in Institutions of Higher Education.

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

AHA Policy
In accordance with the verification hierarchy described in section 7-1.B, the AHA will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

- The student is enrolled at an educational institution that does not meet the definition of institution of higher education in the Higher Education Act of 1965 (see section Exhibit 3-2).
- The student is at least 24 years old.
- The student is a veteran, as defined in section 3-II.E.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- The student is married.
- The student has at least one dependent child, as defined in section 3-II.E.
- The student is a person with disabilities, as defined in section 3-II.E, and was receiving assistance prior to November 30, 2005.

If the AHA cannot verify at least one of these exemption criteria, the AHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, the AHA will then proceed to verify either the student's parents' income eligibility (see section 7-III.J) or the student's independence from his/her parents (see below).

Independent Student

AHA Policy
The AHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

- Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of independent student (see section 3-II.E)
- Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent
- Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is $0.

7-II.F. DOCUMENTATION OF DISABILITY

The AHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The AHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The AHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the AHA receives a verification document that provides such information, the AHA will not place this information in the tenant file. Under no circumstances will the AHA request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at http://hhs.gov/ocr/privacy.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits
Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

AHA Policy
For family members claiming disability who receive disability benefits from the SSA, the AHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD's EIV System is not available, the AHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the AHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the applicant or participant receives the benefit verification letter, they will be required to provide it to the AHA.

Family Members Not Receiving SSA Disability Benefits
Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403.

AHA Policy
For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS

[24 CFR 5.508]
Overview
Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and AHA verification requirements related to citizenship status.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously assisted occupancy. [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals
HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The AHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

> **AHA Policy**
> Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the AHA receives information indicating that an individual's declaration may not be accurate.

Eligible Immigrants

Documents Required
All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

AHA Verification [HCV GB, pp. 5-3 and 5-7]
For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the AHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The AHA will follow all USCIS protocols for verification of eligible immigration status.

7-II.H. VERIFICATION OF PREFERENCE STATUS

AHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

> **AHA Policy**

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The AHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The AHA will verify this preference using the AHA's termination records.

AHA will offer second preference to individuals who were formerly homeless and presently in supportive housing. This Preference shall be verified by a signed letter of referral from the agency that serves the applicant. This letter shall verify the following 1) That the participant was formerly homeless, 2)That the participant is presently a participant in a supportive housing program that serves people transitioning from homelessness, 3)That the participant is in compliance with all program requirements.

PART III: VERIFYING INCOME & ASSETS

Chapter 6, Part I of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides AHA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

AHA Policy
Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

Wages

AHA Policy
For wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

7-III.B. BUSINESS & SELF EMPLOYMENT INCOME

AHA Policy
Business owners and self-employed persons will be required to provide:

- An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted, and the business owner or self-employed person must certify to its accuracy.
- All schedules completed for filing federal and local taxes in the preceding year.
- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The AHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the AHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the AHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months, the AHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS & PAYMENTS IN LIEU OF EARNINGS

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

Social Security/SSI Benefits

AHA Policy
To verify the SS/SSI benefits of applicants, the AHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the AHA will help the applicant request a benefit verification letter from SSA's Web site at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the applicant has received the benefit verification letter, they will be required to provide it to the AHA.

To verify the SS/SSI benefits of participants, the AHA will obtain information about social security/SSI benefits through the HUD EIV System and confirm with the participant(s) that the current listed benefit amount is correct. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, the AHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the AHA will help the participant request a benefit verification letter from SSA's Web site at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the participant has received the benefit verification letter, they will be required to provide it to the AHA.

7-III.D. ALIMONY OR CHILD SUPPORT

AHA Policy

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The methods the AHA will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it receives regular payments, verification will be obtained in the following order of priority:

- Copies of the receipts and/or payment stubs for the 60 days prior to AHA request
- Third-party verification form from the state or local child support enforcement agency
- Third-party verification form from the person paying the support
- Family's self-certification of amount received

If the family declares that it *receives irregular or no payments*, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

- A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts
- If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

7-III.E. ASSETS & INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The AHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

AHA Policy

The AHA will verify the value of assets disposed of only if:

- The AHA does not already have a reasonable estimation of its value from previously collected information, or
- The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a $10,000 certificate of deposit at the last annual reexamination and the AHA verified this amount. Now the person reports that she has given this $10,000 to her son. The AHA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately $5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the AHA will verify the value of this asset.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

7-III.F. NET INCOME FROM RENTAL PROPERTY

AHA Policy
The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the AHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7-III.G. RETIREMENT ACCOUNTS

AHA Policy
The AHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, the AHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, the AHA will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

After retirement, the AHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, the AHA is not required to follow the verification hierarchy, document why third-party verification is not available, or report the income on the 50058. Fully excluded income is defined as income that is entirely excluded from the annual income

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

determination (for example, food stamps, earned income of a minor, or foster care funds) [Notice PIH 2013-04].

AHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, AHAs have the option of requiring additional verification.

For partially excluded income, the AHA is required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student, or income excluded under the earned income disallowance).

AHA Policy
AHA will accept the family's self-certification as verification of fully excluded income. AHA may request additional documentation if necessary to document the income source.

AHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

7-III.I. ZERO ANNUAL INCOME STATUS

AHA Policy
The AHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, and earnings are not being received by families claiming to have zero annual income.

At its discretion the AHA may also run a credit check to assist in the verification of zero income status.

7-III.J. STUDENT FINANCIAL ASSISTANCE

Notice PIH 2015-21
Any financial assistance, in excess of amounts received for tuition, fees and other required charges that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b)(9) and FR 4/10/06].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, the AHA

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

would not be able to determine whether or to what extent the income is to be excluded (see section 7-III.H).

AHA Policy
For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), the AHA will request written third-party verification of both the source and the amount. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, the AHA will request written verification of the student's tuition, fees and other required charges.

If the AHA is unable to obtain third-party written verification of the requested information, the AHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with AHA policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

AHA Policy
If the AHA is required to determine the income eligibility of a student's parents, the AHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The AHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the AHA. The required information must be submitted (postmarked) within 10 business days of the date of the AHA's request or within any extended timeframe approved by the AHA.

The AHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PART IV: VERIFYING MANDATORY DEDUCTIONS

7-IV.A. DEPENDENT & ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that the AHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

Dependent Deduction

See Chapter 6 (6-II.B.) for a full discussion of this deduction. The AHA must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full-time student

Elderly/Disabled Family Deduction

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The AHA must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

AHA Policy

Medical expenses will be verified through:

- Written third-party documents provided by the family, such as Pharmacy printouts or receipts.
- The AHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The AHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- Written third-party verification forms, if the family is unable to provide acceptable documentation.
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the AHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Eligible Household
The medical expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62, or a person with disabilities. The AHA must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

Qualified Expenses
To be eligible for the medical expenses' deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for the AHA's policy on what counts as a medical expense.

Unreimbursed Expenses
To be eligible for the medical expenses' deduction, the costs must not be reimbursed by another source.

AHA Policy
The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

Expenses Incurred in Past Years

AHA Policy
When anticipated costs are related to on-going payment of medical bills incurred in past years, the AHA will verify:

- The anticipated repayment schedule
- The amounts paid in the past, and
- Whether the amounts to be repaid have been deducted from the family's annual income in past years

7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

Attendant Care

AHA Policy
The AHA will accept written third-party documents provided by the family.

If family-provided documents are not available, the AHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Written third-party documents provided by the family, such as receipts or cancelled checks.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Auxiliary Apparatus

AHA Policy
Expenses for auxiliary apparatus will be verified through:

- Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the AHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

Family Member is a Person with Disabilities
To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The AHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work
The AHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

AHA Policy
The AHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Unreimbursed Expenses
To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

AHA Policy
The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILD CARE EXPENSES

Policies related to childcare expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the AHA must verify that:

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of childcare.
- The costs are reasonable.

Eligible Child
To be eligible for the childcare deduction, the costs must be incurred for the care of a child under the age of 13. The AHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

Unreimbursed Expense
To be eligible for the childcare deduction, the costs must not be reimbursed by another source.

AHA Policy
The family (and the care provider) will be required to certify that the childcare expenses are not paid or reimbursed to the family from any source.

Pursuing an Eligible Activity
The AHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

AHA Policy
Information to be Gathered
The AHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work
Whenever possible the AHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA will request family-provided verification from the agency of the member's job seeking efforts to date and require the family to submit to the AHA any reports provided to the other agency.

In the event third-party verification is not available, the AHA will provide the family with a form on which the family member must record job search efforts. The AHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education
The AHA will request third-party documentation to verify that the person permitted to further his or her education by the childcare is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

Gainful Employment
The AHA will seek third-party verification of the work schedule of the person who is permitted to work by the childcare. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

Allowable Type of Child Care
The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

AHA Policy
The AHA will verify that the type of childcare selected by the family is allowable, as described in Chapter 6 (6-II.F).

The AHA will verify that the fees paid to the childcare provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The AHA will verify that the childcare provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses
Only reasonable childcare costs can be deducted.

AHA Policy
The actual costs the family incurs will be compared with the AHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

If the family presents a justification for costs that exceed typical costs in the area, the AHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS

[HCV GB, pp. 5-9 and 5-10]

<table>
<tr><td colspan="2">

- **All** noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the AHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

</td></tr>
<tr><td colspan="2">

Elderly Noncitizens

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

</td></tr>
<tr><td colspan="2">

All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

</td></tr>
<tr><td>

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - "Admitted as a Refugee Pursuant to Section 207"
  - "Section 208" or "Asylum"
  - "Section 243(h)" or "Deportation stayed by Attorney General"
  - "Paroled Pursuant to Section 221 (d)(5) of the USCIS"

</td><td>

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - A final court decision granting asylum (but only if no appeal is taken);
  - A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

</td></tr>
<tr><td>Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210".</td><td>Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".</td></tr>
<tr><td colspan="2">

- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the Federal Register

</td></tr>
</table>

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Chapter 8 – HOUSING QUALITY STANDARDS & RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the AHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and AHA-established requirements.

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed, to determine that the unit meets HQS. Effective July 1, 2014, AHAs may establish a policy for performing unit inspections biennially rather than annually. This policy could apply to some or all assisted units. AHAs still have the option to inspect every unit annually. See Section 8-II.G for further details.

HUD also requires AHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and AHA requirements related to housing quality and rent reasonableness as follows:

> Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.
>
> Part II. The Inspection Process. This part describes the types of inspections the AHA will make and the steps that will be taken when units do not meet HQS.
>
> Part III. Rent Reasonableness Determinations. This part discusses the policies the AHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

PART I: PHYSICAL STANDARDS

8-I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Exhibit 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD 52580 A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires the AHA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, the AHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Exhibit 8-2 summarizes those items that are considered tenant preferences.

Modifications to Provide Accessibility

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest-bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

AHA Policy
Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the AHA for review.

8-I.B. ADDITIONAL LOCAL REQUIREMENTS

The AHA may impose variations to the HQS as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to the HQS. HUD approval is not required if the variations are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]
The AHA must define a "healthy living environment" for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

AHA Policy
The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

Clarifications of HUD Requirements

AHA Policy
As permitted by HUD, the AHA has adopted the following specific requirements that elaborate on HUD standards.

Walls
In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

Windows
Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be present and in good condition.

Doors
All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

All interior doors must have no holes, have all trim intact, and be openable without the use of a key.

Floors
All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be resecured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.

Sinks
All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All sinks must have functioning stoppers.

Toilets
All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

Security
If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

8-I.C. LIFE-THREATENING CONDITIONS

[24 CFR 982.404(a)]
HUD requires the AHA to define life-threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours of AHA notification.

AHA Policy
The following are considered life-threatening conditions:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors

If an owner fails to correct life-threatening conditions as required by the AHA, the AHA will enforce the HQS in accordance with HUD requirements. See 8-II-G.

If a family fails to correct a family-caused life-threatening condition as required by the AHA, the AHA will enforce the family obligations. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the AHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

8-I.D. OWNER & FAMILY RESPONSIBILITIES

[24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear that results in a breach of the HQS. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice
- Maintaining housekeeping that is clean, safe and sanitary

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

[24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13]

If AHA is notified by a public health department or other medical health care provider or verifies information from a source other than a public health department or medical health care provider, that a child of less than six years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the AHA must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the AHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330 and 35.1330; 40 CFR 745.227]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the AHA will take action in accordance with Section 8-II.G.

AHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

8-I.F. VIOLATION OF HQS SPACE STANDARDS

[24 CFR 982.401, 24 CFR 982.403]
A dwelling unit must:

- Provide adequate space and security for the family per Albuquerque City Code
- Have at least one bedroom or living/sleeping room for each two persons

A unit that does not meet these HQS space standards is defined as *overcrowded.*

A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. A bedroom or living/sleeping room must have at least:

- One exterior window with screen, closet, and door
- Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets)

If the AHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the AHA must issue the family a new voucher, and the family and AHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the AHA must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW

[24 CFR 982.405]
Types of Inspections
The AHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections*. The AHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection on or before the effective date of the HAP Contract.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- *Annual/Biennial Inspections*. HUD requires the AHA to inspect each unit under lease at least annually or biennially, depending on AHA policy, to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections*. A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections*. HUD requires that a sample of units be inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the HQS.

Inspection of AHA-Owned Units [24 CFR 982.352(b)]
The AHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in an AHA-owned unit. An AHA-owned unit is defined as a unit that is owned by the AHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the AHA). The independent agency must communicate the results of each inspection to the family and the AHA. The independent agency must be approved by HUD and may be the unit of general local government for the AHA jurisdiction (unless the AHA is itself the unit of general local government or an agency of such government).

Inspection Costs [Notice PIH 2016-05]
The AHA may not charge the family for unit inspections or re-inspections [24 CFR 982.405(e)]. In the case of inspections of AHA-owned units, the AHA may compensate the independent agency from ongoing administrative fee for inspections performed. The AHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

The AHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the AHA may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the AHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to the AHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

AHA Policy
AHA will not charge a fee for failed re-inspections.

Remote Video Inspections (RVIs) [Notice PIH 2020-31]
As an alternative to some or all on-site inspections, the PHA may, but is not required to, perform HQS inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

provides insufficient information or evidence to allow the PHA to make appropriate determinations about whether a condition violates HQS, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, the PHA should have policies and procedures in place to address such limitations.

AHA Policy
The PHA will not conduct any HQS inspection using RVI.

Notice and Scheduling
The family must allow the AHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

AHA Policy
Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. Generally, inspections will be conducted on business days. In the case of a life-threatening emergency, the AHA will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance
HUD permits the AHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

AHA Policy
When a family occupies the unit at the time of inspection an authorized adult must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the AHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted but is not required.

8-II.B. INITIAL HQS INSPECTION

[24CFR 982.401(a)]
Timing of Initial Inspections
HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires AHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA). For AHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
AHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA).

Inspection Results and Reinspections

AHA Policy
If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the AHA for good cause. The AHA will reinspect the unit within five business days of the date the owner notifies the AHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any AHA-approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, the AHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The AHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval after the owner has made repairs, if they are unable to locate another suitable unit.

Utilities
Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

AHA Policy
All utilities must be in service at the time of initial inspection.

Appliances

AHA Policy
All appliances must be in place at the time of initial inspection.

8-II.C. BIENNIAL HQS INSPECTIONS

[24 CFR 982.405; 982.406, Notice PIH 2016-05]

AHA Policy
Each unit under HAP contract must be inspected biennially within 24 months of the last full HQS inspection. The AHA reserves the right to require annual inspections of any unit or owner at any time.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Scheduling the Inspection

AHA Policy
If an adult cannot be present on the scheduled date, the family should request that the AHA reschedule the inspection. The AHA and family will agree on a new inspection date that generally should take place within five business days of the originally scheduled date. The AHA may schedule an inspection more than five business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the AHA will automatically schedule a second inspection. If the family misses two scheduled inspections without AHA approval, the AHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8-II.D. SPECIAL INSPECTIONS

[24 CFR 982.405(g)]
If a participant or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the AHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the AHA must inspect the unit within 15 days of notification.

AHA Policy
During a special inspection, the AHA generally will inspect the entire unit for compliance with HQS along with the violations reported.

If the -annual/biennial inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the AHA may elect to conduct a full annual/biennial inspection.

8-II.E. QUALITY CONTROL INSPECTIONS

[24 CFR 982.405(b); 24 CFR 985.3(e); HCV GB, p. 10-32]
HUD requires an AHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding three months. The selected sample should be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

8-II.F. INSPECTION RESULTS & REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified of the results of all inspections. When an inspection identifies HQS failures, the AHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

AHA Policy

When life-threatening conditions are identified, the AHA will immediately notify both parties by telephone or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the AHA's notice.

When failures that are not life-threatening are identified, the AHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any AHA-approved extension), the owner's HAP will be abated in accordance with AHA policy (see 8-II.G.).

Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any AHA-approved extension, if applicable) the family's assistance will be terminated in accordance with AHA policy (see Chapter 12).

Extensions

For conditions that are life-threatening, the AHA cannot grant an extension to the 24-hour corrective action period. For conditions that are not life-threatening, the AHA may grant an exception to the required time frames for correcting the violation, if the AHA determines that an extension is appropriate [24 CFR 982.404].

AHA Policy

Extensions will be granted in cases where the AHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

- A repair cannot be completed because required parts or services are not available
- A repair cannot be completed because of weather conditions
- A reasonable accommodation is needed because the family includes a person with disabilities

The length of the extension will be determined on a case-by-case basis, but will not exceed 30 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

Reinspections

AHA Policy
AHA will conduct a reinspection immediately following the end of the corrective period, or any AHA approved extension.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the AHA will abate the unit or in the case of family caused violations, a notice of termination to the family, in accordance with AHA policies. If the AHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the AHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8-II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the AHA must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement
If an owner fails to correct HQS deficiencies by the time specified by the AHA, HUD requires the AHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

AHA Policy
The AHA will make all HAP abatements effective the first of the month following the expiration of the AHA specified correction period (including any extension).

The AHA will inspect abated units within five business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent (unless a 7-day notice is issued by the tenant in accordance with state law) the owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

HAP Contract Termination
The AHA must decide how long any abatement period will continue before the HAP contract will be terminated. The AHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

owner reasonable notice of the termination. The AHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

AHA Policy
The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the AHA before the termination date of the HAP contract, the AHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the AHA is 30 days.

8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS

[24 CFR 982.404(b)]
Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the AHA (and any extensions), the AHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

PART III: RENT REASONABLENESS

[24 CFR 982.507]

8-III.A. OVERVIEW

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the AHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

AHA Owned Units [24 CFR 982.352(b)]
In cases where an HCV family is receiving assistance in an AHA-owned unit, the AHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. An AHA-owned unit is defined as a unit that is owned by the AHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the AHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the AHA. The independent agency must

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

be approved by HUD and may be the unit of general local government for the AHA jurisdiction (unless the AHA is itself the unit of general local government or an agency of such government).

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-Initiated Rent Determinations

The AHA must make a rent reasonableness determination and utility adjustment at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The AHA (or independent agency in the case of AHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the AHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

AHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the HAP Contract. For rent increase requests after initial lease-up, the AHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises the AHA will consider unit size and length of tenancy in the other units.

The AHA will determine whether the requested increase is reasonable prior to 30 days of annual recertification. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month of the annual recertification.

All requests for rent adjustments are required to be submitted to AHA inspection 60-120 days prior to tenant's recertification date.

AHA-and HUD-Initiated Rent Reasonableness Determinations

HUD requires the AHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the AHA to make a determination at any other time. The AHA may decide that a new determination of rent reasonableness is needed at any time.

AHA Policy

In addition to the instances described above, the AHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the AHA determines that the initial rent reasonableness determination was in error or (2) the AHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

LIHTC and HOME Assisted Units [24 CFR 982.507(c)]
For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the AHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the AHA for the unit size involved.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider
HUD requires AHAs to take into consideration the factors listed below when determining rent comparability. The AHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of bedrooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

Units that Must Not Be Used as Comparables
Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance. [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

Note: Notice PIH 2020-19, issued August 21, 2020, provides further guidance on the issue of what constitutes an assisted unit.

Rents Charged for Other Units on the Premises
The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

By accepting the AHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the AHA information regarding rents charged for other units on the premises.

8-III.D. AHA RENT REASONABLENESS METHODOLOGY

How Market Data Is Collected

AHA Policy
The AHA will collect and maintain data on market rents in the AHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents Are Determined

AHA Policy
The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The AHA will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type.

The adjustment must reflect the rental value of the difference—not its construction costs (e.g., it might cost $20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rental units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of $500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $500 x 11 months = 5500/12 months = actual monthly rent of $488.

The AHA will notify the owner of the rent the AHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The AHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

must submit any additional information within five business days of the AHA's request for information or the owner's request to submit information.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD52580A (9/00)

Sanitary Facilities
The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal
The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security
The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment
The unit must have a safe system for heating the dwelling unit. Air conditioning is required. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required. Permanent sources of heat are required in each bedroom.

Illumination and Electricity
Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials
The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

Interior Air Quality

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

Water Supply
The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint
Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero-bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed
- Provide all prospective families with "Protect Your Family from Lead in Your Home"
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities within 30 days when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint
- Maintain covered housing without deteriorated paint if there is child under six in the family

For units occupied by elevated blood lead level (lead poisoned) children under six years of age, an environmental investigation must be conducted (paid for by the PHA). If lead hazards are identified during the environmental investigation, the owner must complete hazard reduction activities within 30 days.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access
Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood
The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition
The dwelling unit and its equipment must be in sanitary condition and free of vermin, insect, bedbug and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Heath/Safety
The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

Carbon Monoxide Detectors
Carbon monoxide detectors must be installed and in working condition in units with a gas flame. One on each floor.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD52580A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal*. The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security.* The inspector may determine the adequacy of room sizes and room locations according to City Code The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items*. The family inspector may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- *Indoor Air.* Inspector may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. Screens are required to be present and in good condition.
- *Sanitary Conditions*. The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Families have no discretion with respect to lead-based paint standards and smoke detectors, and carbon monoxide detectors.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 9 – GENERAL LEASING POLICIES

INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the AHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the AHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the AHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the AHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

9-I.A. TENANT SCREENING

The AHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The AHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the AHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before AHA approval of the tenancy, the AHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The AHA must also inform the owner or manager or his/her rights and obligations under the Violence against Women Act of 2013 (VAWA) [24 CFR 5.2005(a)(2)].

The AHA must provide the owner with the family's current and prior address (as shown in the AHA records) and the name and address (if known to the AHA) of the landlord at the family's current and prior address [24 CFR 982.307(b)(1)].

The AHA is permitted, but not required, to offer the owner other information in the AHA's possession about the tenancy history or drug trafficking of family members [24 CFR 982.307(b)(2)].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The AHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

The AHA may not disclose to the owner any confidential information provided by the family in response to AHA request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(b)(4)].

AHA Policy
The AHA will not screen applicants for family behavior or suitability for tenancy.

The AHA will not provide additional screening information to the owner.

9-I.B. REQUESTING TENANCY APPROVAL

[Form HUD-52517]
After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the AHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the AHA:

- Completed Request for Tenancy Approval (RFTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RFTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the AHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother, husband etc. of any member of the family, unless the AHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
The RFTA must be signed by both the family and the owner.

The owner may submit the RFTA on behalf of the family.

Completed RFTA must be submitted as hard copies, in-person, by mail.

The family may not submit, and the AHA will not process, more than one (1) RFTA at a time.

When the family submits the RFTA and proposed lease, the AHA will also review the terms of the RTFA for consistency with the terms of the proposed lease.

If the terms of the RTFA are not consistent with the terms of the proposed lease, the AHA will notify the family and the owner of the discrepancies.

Corrections to the terms of the RFTA and/or the proposed lease will only be accepted as hard copies, in-person, or by mail. The AHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the AHA will attempt to communicate with the owner and family by phone, fax, or email. AHA will use mail when the parties cannot be reached by phone, or email.

9-I.C. OWNER PARTICIPATION

The AHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the AHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. There are also criteria for which the AHA must disapprove an owner. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

9-I.D. ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the AHA's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]
The AHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

AHA-Owned Units [24 CFR 982.352(b)]
Otherwise, eligible units that are owned or substantially controlled by the AHA issuing the voucher may also be leased in the voucher program. In order for an AHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the AHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select an AHA-owned unit without any pressure or steering by the AHA.

> **AHA Policy**
> AHA will have eligible AHA-owned units available for leasing under the voucher program.
>
> AHA will inform the family of this housing at the time of the briefing.
>
> AHA will also inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a AHA-owned unit without any pressure or steering by AHA.

Special Housing Types [24 CFR 982 Subpart M]
HUD regulations permit, but do not generally require, the AHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that the AHA has chosen to allow.
The regulations do require the AHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Duplicative Assistance [24 CFR 982.352(c)]
A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]
In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size
In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]
In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden [24 CFR 982.508]
Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

9-I.E. LEASE & TENANCY ADDENDUM

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; the AHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Lease Form and Tenancy Addendum [24 CFR 982.308]
If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

> **AHA Policy**
> The AHA does not provide a model or standard dwelling lease for owners to use in the HCV program but highly suggests usage of the Apartment Association of New Mexico Standard Lease.

Lease Information [24 CFR 982.308(d)]
The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

Term of Assisted Tenancy
The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the AHA to approve a shorter initial lease term if certain conditions are met.

> **AHA Policy**
> The AHA will not approve an initial lease term of less than one (1) year.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be stated in the dwelling lease if they exist.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The AHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

Security Deposit [24 CFR 982.313 (a) and (b)]
The owner may collect a security deposit from the tenant. The AHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the AHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

> **AHA Policy**
> The AHA will allow the owner to collect any security deposit amount the owner determines is appropriate according to state law. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant
Owners may not demand or accept any rent payment from the family in excess of the rent to the owner as approved by the PHA minus the AHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

> **AHA Policy**
> The AHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.
>
> Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.
>
> Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.
>
> The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

AHA Review of Lease
The AHA will review the dwelling lease for compliance with all applicable requirements.

AHA Policy
If the dwelling lease is incomplete or incorrect, the AHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, or by mail. The AHA will not accept missing and corrected information over the phone.

Because the initial leasing process is time-sensitive, the AHA will attempt to communicate with the owner and family by phone. The AHA will use mail when the parties can't be reached by phone.

The AHA is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if the AHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)].

AHA Policy
The AHA will not review the owner's lease for compliance with state/local law.

9-I.F. TENANCY APPROVAL

[24 CFR 982.305]
After receiving the family's Request for Tenancy Approval, the PHA must promptly notify the family and owner whether the assisted tenancy is approved after initial inspection.

Prior to approving the assisted tenancy and execution of a HAP contract, the PHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the PHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must is reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the AHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

AHA Policy
The AHA will complete its determination within 10 business days of receiving all required information.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

If the terms of the RFTA/proposed lease are changed for any reason, including but not limited to negotiation with the AHA, the AHA will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner.

Corrections to the RFTA/proposed lease will only be accepted as hard copies, in-person, by mail. The AHA will not accept corrections over the phone.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability or rent reasonableness, the AHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION

[24 CFR 982.305]
The HAP contract is a written agreement between the PHA and the owner of the dwelling unit. Under the HAP contract, the AHA agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA must execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The PHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The PHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The PHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the AHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Any HAP contract executed after the 60-day period is void, and the AHA may not pay any housing assistance payment to the owner.

AHA Policy
Owners who have not previously participated in the HCV program must attend a meeting with the AHA in which the terms of the Tenancy Addendum and the HAP contract will be explained. The AHA may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.

The owner and the assisted family will execute the HAP Contract and the owner must provide a copy to the AHA. The AHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the AHA will execute the HAP contract. The AHA will not execute the HAP contract until the owner has submitted IRS form W-9. The AHA will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT

[24 CFR 982.308]
If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, the execution of a new lease and HAP contract are required. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RFTA) along with a new dwelling lease containing the proposed changes. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of the rent to owner, the owner must notify the PHA at least 60 days prior to recertification date before any such changes go into effect [24 CFR 982.308(g)(4)]. The PHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or terminate the tenancy in accordance with the terms of the lease.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

AHA Policy
Where the owner is requesting a rent increase, the AHA will determine whether the requested increase is reasonable within 30 days prior to recertification date. The owner will be notified of the determination in writing.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 10 – MOVING WITH CONTINUED ASSISTANCE & PORTABILITY

INTRODUCTION

Freedom of housing choice is a hallmark of the housing choice voucher (HCV) program. In general, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and AHA policies governing moves within or outside the AHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the AHA's HCV program, whether the family moves to another unit within the AHA's jurisdiction or to a unit outside the AHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the AHA's jurisdiction. This part also covers the special responsibilities that the AHA has under portability regulations and procedures.

PART I: MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD lists six regulatory conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.354(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the AHA a copy of the notice at the same time [24 CFR 982.354(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.354(b)(1)(ii)].

  AHA Policy
  If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the AHA a copy of the termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.354(b)(2)]. The family must give the AHA a copy of any owner eviction notice [24 CFR 982.551(g)].
- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.354(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

prior notification to the AHA, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4), 24 CFR 982.353(b)].

AHA Policy
If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the AHA will request documentation in accordance with section 16-IX.D of this plan.

The AHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the AHA will document the waiver in the family's file.

The PHA may choose to provide a voucher to facilitate an emergency transfer of the victim without first terminating the assistance of the perpetrator.

Before granting an emergency transfer, the PHA will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim.

The PHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan and discusses external transfers to other covered housing programs.

- The AHA has terminated the HAP contract for the family's unit for the owner's breach [24 CFR 982.354(b)(1)(i)].
- The AHA determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the AHA must issue the family a new voucher, and the family and AHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the AHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the AHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

10-I.B. RESTRICTIONS ON MOVES

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which AHA may deny a family permission to move and two ways in which AHA may restrict moves by a family.

Denial of Moves
HUD regulations permit the AHA to deny a family permission to move under the following conditions:

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Insufficient Funding
The AHA may deny a family permission to move either within or outside the AHA's jurisdiction if the AHA does not have sufficient funding for continued assistance [24 CFR 982.354(e)(1)]. However, Notice PIH 2012-42 significantly restricts the ability of AHAs to deny permission to move due to insufficient funding and places further requirements on AHAs regarding moves denied due to lack of funding. The requirements found in this notice are mandatory.

AHA Policy
The AHA will deny a family permission to move on grounds that the AHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the AHA; (b) the AHA can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the AHA can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs.

The AHA will create a list of families whose moves have been denied due to insufficient funding. When funds become available, the families on this list will take precedence over families on the waiting list. The AHA will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list (see section 4-III.D).

The AHA will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

Grounds for Denial or Termination of Assistance
The PHA may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.354(e)(2)].

AHA Policy
If the AHA has grounds for denying or terminating a family's assistance, the AHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

Restrictions on Elective Moves [24 CFR 982.354(c)]
HUD regulations permit the PHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the PHA to prohibit more than one elective move by a participant family during any 12-month period. However, such prohibitions, if adopted, do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member. (For the policy on documentation of abuse, see section 10-I.A.) In addition, the PHA may not establish a policy permitting moves only at reexamination [Notice PIH 2012-42].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
The AHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the AHA's jurisdiction or outside it under portability.

The AHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the AHA's jurisdiction.

The AHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, the AHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10-I.C. MOVING PROCESS

Notification
If a family wishes to move to a new unit, the family must notify the PHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.354(d)(2)]. If the family wishes to move to a unit outside the PHA's jurisdiction under portability, the notice to the PHA must specify the area where the family wishes to move [24 CFR 982.354(d)(2), Notice PIH 2012-42]. The notices must be in writing [24 CFR 982.5].

Approval

AHA Policy
Upon receipt of a family's notification that it wishes to move, the AHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The AHA will notify the family in writing of its determination within 10 business days following receipt of the family's notification.

Reexamination of Family Income and Composition

AHA Policy
For families approved to move to a new unit within the AHA's jurisdiction, the AHA will perform a new initial inspection in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the AHA's jurisdiction under portability, the AHA will follow the policies set forth in Part II of this chapter.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Voucher Issuance and Briefing

AHA Policy
For families approved to move to a new unit within the AHA's jurisdiction, the AHA will issue a new voucher within 10 business days of the AHA's written approval to move. No briefing is required for these families. The AHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the AHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the AHA's jurisdiction under portability, the AHA will follow the policies set forth in Part II of this chapter.

Housing Assistance Payments [24 CFR 982.311(d)]
When a family moves out of an assisted unit or is deceased, the AHA may not make any housing assistance payment to the owner for any month after the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

Zero HAP Families Who Wish to Move [24 CFR 982.455]
A participant who is not receiving any subsidy, but whose HAP contract is still in force, may request a voucher to move to a different unit. The PHA must issue a voucher to move unless it has grounds to deny assistance under the program regulations. However, if the PHA determines no subsidy would be paid at the new unit, the PHA may refuse to enter into a HAP contract on behalf of the family.

AHA Policy
If a zero HAP family requests to move to a new unit, the family may request a voucher to move. However, if no subsidy will be paid at the unit to which the family requests to move, the AHA will not enter into a HAP contract on behalf of the family for the new unit.

PART II: PORTABILITY

10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PHA is known as portability. The PHA that issues the voucher is called the initial PHA. The AHA that has jurisdiction in the area to which the family wants to move is called the receiving PHA.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA provides all housing services for the family and bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance with its own program funds, and the initial PHA has no further relationship with the family. The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the initial PHA's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request [Notice PIH 2012-42].

PHAs commonly act as both the initial and receiving PHA because families may move into or out of their jurisdiction under portability. Each role involves different responsibilities. The PHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

In administering portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required forms [24 CFR 982.355(e)(5)].

PHAs must also comply with billing and payment deadlines. HUD may reduce an administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements [24 CFR 982.355(e)(7)].

10-II.B. INITIAL PHA ROLE

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which PHA it has selected. If the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family (24 CFR 982.255(b).

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. HUD regulations and PHA policy determine whether a family qualifies.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives the PHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

family: insufficient funding and grounds for denial or termination of assistance. If a PHA intends to deny a family permission to move under portability due to insufficient funding, the PHA must notify HUD within 10 business days of the determination to deny the move [24 CFR 982.355(e)].

AHA Policy
In determining whether or not to deny an applicant family permission to move under portability because the AHA lacks sufficient funding or has grounds for denying assistance to the family, the initial PHA will follow the policies established in section 10 I.B of this chapter. If the AHA does deny the move due to insufficient funding, the AHA will notify HUD in writing within 10 business days of the AHA's determination to deny the move.

In addition, the AHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

AHA Policy
If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the AHA's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial AHA's jurisdiction for at least 12 months before requesting portability.

The AHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, or stalking.

Participant Families
The initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. The Violence against Women Act of 2013 (VAWA) creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.353(b)].

AHA Policy
The AHA will determine whether a participant family may move out of the AHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. The AHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Determining Income Eligibility

Applicant Families
An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(1)]. The family must specify the area to which the family wishes to move [24 CFR 982.355(c)(1)].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.353(d)(1), 24 CFR 982.355(9)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2012-42].

Participant Families
The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2)].

Reexamination of Family Income and Composition
No new reexamination of family income and composition is required for an applicant family.

> **AHA Policy**
> For a participant family approved to move out of its jurisdiction under portability, the AHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.
>
> The AHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing
The regulations and policies on briefings set forth in Chapter 5 of this plan require the AHA to provide information on portability to all applicant families that qualify to lease a unit outside the AHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

> **AHA Policy**
> No formal briefing will be required for a participant family wishing to move outside the AHA's jurisdiction under portability. However, the AHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5).
>
> The AHA will provide the name, address, and phone of the contact for the PHAs in the jurisdiction to which they wish to move. If there is more than one PHA with jurisdiction over the area to which the family wishes to move, the AHA will advise the family that the family must select the receiving PHA and notify the initial PHA of which receiving PHA was selected. The AHA will further inform the family that if the family prefers not to

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family.

The AHA will advise the family that they will be under the RHA's policies and procedures, including screening, subsidy standards, voucher extension policies, and payment standards.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the AHA will follow the regulations and procedures set forth in Chapter 5.

AHA Policy

For participating families approved to move under portability, the AHA will issue a new voucher within 10 business days of the AHA's written approval to move.

The initial term of the voucher will be 60 days.

Voucher Extensions and Expiration

AHA Policy

The AHA will approve no extensions to a voucher issued to an applicant or participant family porting out of the AHA's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 90 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

Preapproval Contact with the Receiving PHA

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether it will approve or deny the move [Notice PIH 2012-42].

AHA Policy

The AHA will use email, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Initial Notification to the Receiving PHA
After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA via email or other confirmed delivery method to expect the family [24 CFR 982.355(c)(3); 24 CFR 982.355(c)(7)]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(6)].

AHA Policy
Because the portability process is time-sensitive, the AHA will notify the receiving PHA by phone, fax, or email to expect the family. The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, email address, and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The AHA will pass this information along to the family. The AHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

Sending Documentation to the Receiving PHA
The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2012-42]
- A copy of the family's voucher [Notice PIH 2012-42]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary, in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(7), Notice PIH 2012-42]
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(7), Notice PIH 2012-42]

AHA Policy
In addition to these documents, the AHA will provide the following information, if available, to the receiving PHA:

- Social security numbers (SSNs)
- Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system
- Documentation of legal identity
- Documentation of citizenship or eligible immigration status
- Documentation of participation in the earned income disallowance (EID) benefit
- Documentation of participation in a family self-sufficiency (FSS) program

The AHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

Initial Billing Deadline [Notice PIH 2016-09]
The deadline for submission of initial billing is 90 days following the expiration date of the voucher issued to the family by the initial PHA. In cases where suspension of the voucher delays the initial billing submission, the receiving PHA must notify the initial PHA of delayed billing

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

before the billing deadline and document the delay is due to the suspension. In this case, the initial PHA must extend the billing deadline by 30 days.

If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must notify the receiving PHA in writing. The initial PHA may report to HUD the receiving PHA's failure to comply with the deadline.

If the initial PHA will honor the late billing, no action is required.

AHA Policy
If AHA has not received an initial billing notice from the receiving PHA within the billing deadline, it will contact the receiving PHA to inform them that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. AHA will send the receiving PHA a written confirmation of its decision by mail.

The AHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2012-42]
If the receiving PHA is administering the family's voucher, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. When reimbursing for administrative fees, the initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill [24 CFR 982.355(e)(2)].

The initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be received by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over leasing or funding shortfalls. The AHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

AHA Policy
The initial PHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the initial PHA that direct deposit is not acceptable to them.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Annual Updates of Form HUD-50058
If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

Denial or Termination of Assistance [24 CFR 982.355(c)(17)]
At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance with the family in accordance with 24 CFR 982.552 and 24 CFR 982.553. (For AHA policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)]. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families [24 CFR 982.355(b)].

Administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used [24 CFR 982.355(c)(10)]. The family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(c)(12)], and the receiving PHA's policies on extensions of the voucher term apply [24 CFR 982.355(c)(14)].

Responding to Initial PHA's Request [24 CFR 982.355(c)]
The receiving PHA must respond via email or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA (24 CFR 982.355(c)(4).

> **AHA Policy**
> The AHA will use email, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

Initial Contact with Family
When a family moves into the AHA's jurisdiction under portability, the family is responsible for promptly contacting the AHA and complying with the AHA's procedures for incoming portable families. The family's failure to comply may result in denial or termination of the receiving PHA's voucher [24 CFR 982.355(c)(8)].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

If the voucher issued to the family by the initial PHA has expired, the receiving PHA must contact the initial PHA to determine if it will extend the voucher [24 CFR 982.355(c)(13)].

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2012-42]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2012-42].

> **AHA Policy**
> The AHA will not require the family to attend a briefing. The AHA will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about the AHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. The AHA will suggest that the family attend a full briefing at a later date.

Income Eligibility and Reexamination

The receiving PHA does not redetermine eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(9)]. If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit [24 CFR 982.355(c)(11)].

> **AHA Policy**
> For any family moving into its jurisdiction under portability, the AHA will conduct a new reexamination of family income and composition. However, the AHA will not delay issuing the family a voucher for this reason. Nor will the AHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the AHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.
>
> In conducting its own reexamination, the AHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

Voucher Issuance

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(c)(13)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(15)].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Timing of Voucher Issuance
HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2012-42].

AHA Policy
When a family ports into its jurisdiction, the AHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the AHA's procedures. The AHA will update the family's information when verification has been completed.

Voucher Term
The term of the receiving PHA's voucher may not expire before 30 calendar days from the expiration of the initial PHA's voucher [24 CFR 982.355(c)(13)].

AHA Policy
The receiving PHA's voucher will expire 30 calendars days from the expiration date of the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(14), Notice 2012-42]
Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must inform the initial PHA of any extension granted to the term of the voucher. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

AHA Policy
The AHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the AHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The AHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]
If the family submits a request for tenancy approval during the term of the receiving PHA's voucher, the PHA must suspend the term of that voucher. The term of the voucher stops from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied [24 CFR 982.4(b)] (see Section 5-II.E).

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Notifying the Initial PHA
The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(16)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [Notice PIH 2012-42]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2012-42].

Administering a Portable Family's Voucher
Portability Billing [24 CFR 982.355(e)]
To cover assistance for a portable family that was not absorbed, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. The amount of the housing assistance payment for a portable family in the receiving PHA's program is determined in the same manner as for other families in the receiving PHA's program.

The receiving PHA may bill the initial PHA for the lesser of 80 percent of the initial PHA's ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill (i.e., the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee).

If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

> **AHA Policy**
> Unless the AHA negotiates a different amount of reimbursement with the initial PHA, the AHA will bill the initial PHA the maximum amount of administrative fees allowed, ensuring any administrative fee proration has been properly applied.

Initial Billing Deadline
If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA executes a HAP contract on behalf of the family and (b) in time that the notice will be received no later than 60 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2012-42]. A copy of the family's form HUD-50058, Family Report, completed by the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or email.

AHA Policy
The AHA will send its initial billing notice by fax or email, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is over leased) [Notice PIH 2012-42].

Ongoing Notification Responsibilities [Notice PIH 2012-42, HUD-52665]
Annual Reexamination. The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

AHA Policy
The AHA will send a copy of the updated HUD-50058 by regular mail at the same time the family and owner are notified of the reexamination results.

Change in Billing Amount.
The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

Late Payments [Notice PIH 2012-42]
If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

Overpayments [Notice PIH 2012-42]
In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2012-42.

Denial or Termination of Assistance
At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(17)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement [HUD-52665; Notice PIH 2012-42].

> **AHA Policy**
> If AHA elects to deny or terminate assistance for a portable family, the AHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The AHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family
The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA has funding available under its annual contributions contract (ACC) [24 CFR 982.355(d)(1), Notice PIH 2012-42].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family [Notice PIH 2012-42].

AHA Policy

If the AHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the AHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If the AHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability [24 CFR 982.355(e)(4)].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 11 – REEXAMINATIONS

INTRODUCTION

The AHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and AHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS

[24 CFR 982.516]

11-I.A. OVERVIEW

The AHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

11-I.B STREAMLINED ANNUAL REEXAMINATIONS

[24 CFR 982.516(b)]

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources. If at least 90 percent of the family's income is from fixed sources, the PHA may streamline the verification of fixed income but is not required to verify non-fixed income amounts . If the family receives less than 90 percent of its income from fixed sources, the PHA may streamline the verification of fixed income and must verify non-fixed income annually.

AHA Policy
The AHA will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. The AHA will document in the file how the determination that a source of income was fixed was made.

If a family member with a fixed source of income is added, the AHA will use third-party verification of all income amounts for that family member.

If verification of the COLA or rate of interest is not available, the PHA will obtain third-party verification of income amounts.

Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.

11-I.C. SCHEDULING ANNUAL REEXAMINATIONS

The PHA must establish a policy to ensure that the annual reexamination for each family is completed within a 12-month period and may require reexaminations more frequently [HCV GB p. 12-1].

AHA Policy
The AHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the AHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the AHA will perform a new annual reexamination.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The AHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Annual Reexamination Process

The PHA is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the AHA. However, AHA should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

AHA Policy

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or cohead. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the AHA to request a reasonable accommodation (see Chapter 2).

Notification of annual reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the AHA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the AHA will send a second notification with a new interview date and appointment time.

If a family fails to attend two scheduled interviews without AHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the AHA must execute a certification attesting to the role and the assistance provided by any such third party.

11-I.D. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the AHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

AHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include AHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documents or forms related to the family's income, expenses, and family composition.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

Additionally, HUD recommends that at annual reexaminations AHAs ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state [Notice PIH 2012-28].

AHA Policy
At the annual reexamination, the AHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. The AHA will use its third-party screening software as well as the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If the AHA proposes to terminate assistance based on lifetime sex offender registration information, the AHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter 12.)

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the AHA has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the housing quality standards (HQS) (see Chapter 8), the AHA must issue the family a new voucher, and the family and AHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the AHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

11-I.E. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS

[24 CFR 982.552(b)(5)]
Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with AHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

AHA Policy
During the annual reexamination process, the AHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the AHA will process a reexamination in accordance with the policies in this chapter.

11-I.F. EFFECTIVE DATES

The PHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

AHA Policy
In general, an increase in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the AHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the AHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, increases in the family share of the rent will be applied retroactively to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a decrease in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the AHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the AHA.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the AHA by the date specified, and this delay prevents the AHA from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATIONS

[24 CFR 982.516]

11-II.A. OVERVIEW

Family circumstances may change between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

changes. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both AHA- and family-initiated interim reexaminations.

11-II.B. CHANGES IN FAMILY & HOUSEHOLD COMPOSITION

The family is required to report all changes in family composition. The AHA must adopt policies prescribing when and under what conditions the family must report changes in income and family composition. However, due to family obligations under the program, the AHA has limited discretion in this area.

AHA Policy
The AHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

New Family Members Not Requiring AHA Approval
The addition of a family member as a result of birth, adoption, or court-awarded custody does not require AHA approval. However, the family is required to promptly notify the AHA of the addition [24 CFR 982.551(h)(2)].

AHA Policy
The family must inform the AHA of the birth, adoption, or court-awarded custody of a child within 10 business days.

New Family and Household Members Requiring Approval
With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request AHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the AHA must make appropriate adjustments in the family share of the rent and the HAP payment at the effective date of either the annual or interim reexamination [24 CFR 982.516(e)(2)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the AHA must issue the family a new voucher, and the family and AHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the AHA must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

AHA Policy
Families must request AHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days or 90 cumulative days within a 12-month

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the AHA prior to the individual moving into the unit.

The AHA will not approve the addition of a new family or household member unless the individual meets the AHA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

The AHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the AHA determines an individual meets the AHA's eligibility criteria and documentation requirements, the AHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the AHA determines that an individual does not meet the AHA's eligibility criteria or documentation requirements, the AHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The AHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

Families must promptly notify the AHA if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the AHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

AHA Policy

If a household member ceases to reside in the unit, the family must inform the AHA within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the AHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the AHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

AHA-Initiated Interim Reexaminations

AHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the AHA. They are not scheduled because of changes reported by the family.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
The AHA will conduct interim reexaminations in each of the following instances:

- For families receiving the Earned Income Disallowance (EID), the AHA will conduct an interim reexamination at the start and conclusion of the 24-month eligibility period.
- If the family has reported zero income, the AHA will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.
- If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g., seasonal or cyclic income), the AHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.
- If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the AHA will conduct an interim reexamination.
- The AHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

Family-Initiated Interim Reexaminations
The PHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

Required Reporting
HUD regulations give the AHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

AHA Policy
Families are required to report all increases in income, including new employment, within 10 business days of the date the change takes effect.

The AHA will conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase.

AHA will conduct interim reexaminations for any increase in income for families that have previously reported no income (zero income).

AHA will conduct interim reexaminations for families that have experienced an increase in gross income of more than $2,400 per year.

In all other cases, the AHA will note the information in the tenant file but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)]. The AHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

AHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, the AHA will note the information in the tenant file but will not conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, the AHA will conduct an interim reexamination. AHA will process an interim reduction in rent if the total annual gross income decrease is more than $1,000 and will last more than 30-days. See Section 11-II.D. for effective dates.

Families may report changes in income or expenses at any time.

11-II.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

AHA Policy

The family must notify the AHA of changes by providing all required supporting documentation via drop-off, email or mail. The tenant must obtain proof of delivery. Incomplete request forms will not be processed.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the AHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the AHA will determine if additional documentation is required. The family must submit any required information or documents within 10 business days of receiving a request from the AHA. This time frame may be extended for good cause with AHA approval. The AHA will accept required documentation by mail, by email, , or in person.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Effective Dates
The AHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

AHA Policy
All requests for changes must be submitted on or before the 20th of the month prior to the effective change date.

If the family share of the rent is to *increase*:

- The increase generally will be effective on the first of the month following 30 days' notice to the family.
- If a family fails to report a change within the required time frames or fails to provide all required information within the required time frames, the increase will be applied retroactively to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

- The decrease will be effective on the first day of the month following the month in which the change was reported, and all required documentation was submitted.

PART III: RECALCULATING FAMILY SHARE & SUBSIDY AMOUNT

11-III.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, the AHA must recalculate the family share of the rent and the subsidy amount and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

11-III.B. CHANGES IN PAYMENT STANDARDS & UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the AHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Payment Standards [24 CFR 982.505]
The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the AHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the AHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
    - If the payment standard amount has increased, the increased payment standard will be applied at the first annual reexamination following the effective date of the increase in the payment standard.
    - If the payment standard amount has decreased, the decreased payment standard will be applied at the second annual reexamination following the effective date of the decrease in the payment standard.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

Subsidy Standards [24 CFR 982.505(c)(4)]
If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the AHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's first annual reexamination following the change in family unit size.

Utility Allowances [24 CFR 982.517(d)]
The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the AHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the AHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the PHA must use the PHA current utility allowance schedule [HCV GB, p. 18-8].

AHA Policy
Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the allowance is adopted.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

11-III.C. NOTIFICATION OF NEW FAMILY SHARE & HAP AMOUNT

The AHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the AHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

AHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment.

The notice will state the family has the right to request an explanation of how the assistance was calculated and if the family disagrees, they have the right to informal hearing. The notice will include the procedures for requesting an informal hearing.

11-III.D. DISCREPANCIES

During an annual or interim reexamination, the AHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the AHA may discover errors made by the AHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 12 – TERMINATION OF ASSISTANCE & TENANCY

HUD regulations specify mandatory and optional grounds for which AHA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter describes the policies that govern mandatory and optional terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part describes the various circumstances under which assistance under the program can be terminated by the family or by the AHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the AHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the AHA may consider in lieu of termination, the criteria the AHA will use when deciding what action to take, and the steps the AHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A. OVERVIEW

HUD requires the AHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the AHA to terminate assistance for certain other actions or inactions of the family. In addition, a family may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the AHA.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE

[24 CFR 982.455]
As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by the AHA is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

AHA Policy
If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the AHA of the change and request an interim reexamination before the expiration of the 180-day period.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the AHA terminate housing assistance payments on behalf of the family at any time.

AHA Policy
The request to terminate assistance should be made in writing and signed by the head of household, and spouse or cohead if applicable. Before terminating the family's assistance, the AHA will follow the notice requirements in Section 12-II.F.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires the AHA to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]
The AHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in section 12-II.E, incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

AHA Policy
A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. In such cases the AHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in section 12 II.C. In making its decision, the AHA will consider the factors described in sections 12-II.D and 12-II.E. Upon consideration of such factors, the AHA may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

Failure to Provide Consent [24 CFR 982.552(b)(3)]
The AHA must terminate assistance if any family member fails to sign and submit any consent form, they are required to sign for a regular or interim reexamination. See Chapter 7 for a complete discussion of consent requirements.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]
The AHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the AHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2018-24]
The AHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the AHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the AHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the AHA determined the family to be noncompliant.

> **AHA Policy**
> The AHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]
The AHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally- assisted housing.

Lifetime Registered Sex Offenders [Notice PIH 2012-28]
Should AHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the AHA must immediately terminate assistance for the household member.

In this situation, the AHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the AHA must terminate assistance for the household.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]
If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the AHA must the terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and AHA policies or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]
The AHA must immediately terminate program assistance for deceased single member households.

12-I.E. MANDATORY POLICIES & OTHER AUTHORIZED TERMINATIONS

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]
HUD requires the AHA to establish policies that permit the AHA to terminate assistance if the AHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

Use of Illegal Drugs and Alcohol Abuse

AHA Policy
The AHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The AHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Currently engaged in is defined as any use of illegal drugs during the previous three months.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Drug-Related and Violent Criminal Activity [24 CFR 5.100]
Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

AHA Policy
The AHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The AHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

A record or records of arrest() will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the AHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the AHA may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c), 24 CFR 5.2005(c)]
HUD permits the AHA to terminate assistance under a number of other circumstances. It is left to the discretion of the AHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence against Women Act of 2013 explicitly prohibits AHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, or stalking as reasons for terminating the assistance of a victim of such abuse.

AHA Policy
The AHA **will** terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related AHA policies.
- Any family member has been evicted from federally assisted housing in the last five years.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any PHA in connection with Section 8 or public housing assistance under the 1937 Act.
- The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family has breached the terms of a repayment agreement entered into with the AHA.

A family member has engaged in or threatened violent or abusive behavior toward AHA personnel.

Abusive or violent behavior towards AHA personnel include verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, the AHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the AHA may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. The AHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

AHA Policy

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.

Insufficient Funding [24 CFR 982.454]

The AHA may terminate HAP contracts if the AHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

AHA Policy

The AHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If the AHA determines there is a shortage of funding, prior to terminating any HAP contracts, the AHA will determine if any other actions can be taken to reduce program costs.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

In the event that the AHA decides to stop issuing vouchers as a result of a funding shortfall, and the AHA is not assisting the required number of special purpose vouchers (NED families, HUD-Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when the AHA resumes issuing vouchers, the AHA will issue vouchers first to the special purpose voucher families on its waiting list until it has reached the required number of special purpose vouchers, when applicable.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the AHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the AHA will inform the local HUD field office. The AHA will terminate the minimum number needed in order to reduce HAP costs to a level within the AHA's annual budget authority.

If the AHA must terminate HAP contracts due to insufficient funding, the AHA will do so in accordance with the following criteria and instructions:

Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

The AHA is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, the regulations give the AHA the authority to either terminate the family's assistance or to take another action. This part discusses the various actions the AHA may choose to take when it has discretion and outlines the criteria the AHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notification to the family of the AHA's intent to terminate assistance.

12-II.B. METHOD OF TERMINATION

[24 CFR 982.552(a)(3)]

Termination of assistance for a participant may include any or all of the following:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to enter into a new HAP contract or approve a lease, or
- Refusing to process a request for or to provide assistance under portability procedures.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

As a condition of continued assistance, the AHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

AHA Policy

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon AHA request.

Repayment of Family Debts

AHA Policy

If a family owes amounts to the AHA, as a condition of continued assistance, the AHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the AHA of the amount owed. See Chapter 16 for policies on repayment agreements.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, HUD permits the AHA to terminate assistance if a preponderance of the evidence indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

AHA Policy

The AHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

Use of Criminal Conviction Records after Admission [24 CFR 5.903]

The regulation at 24 CFR 5.903 governs a PHA's access to and use of criminal conviction records obtained from a "law enforcement agency" such as the National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records. While the regulatory listing of permitted uses for these records includes PHA screening of applicants for admission to the HCV program, it specifically excludes the use of records for lease enforcement and eviction of HCV participants and excludes by omission a PHA's use of records to terminate assistance for participants. While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission,

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose. The limitations, however, do not apply to criminal conviction information searches from non-federal sources (i.e., sources other than the "law enforcement agencies" defined in 24 CFR 5.902(b)). There is no prohibition that bars a PHA from using non-federal sources to conduct criminal background checks of program participants.

Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]
The AHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

AHA Policy
The AHA will consider the following facts and circumstances when making its decision to terminate assistance:

- The seriousness of the case, especially with respect to how it would affect other residents' safety or property
- The effects that termination of assistance may have on other members of the family who were not involved in the action or failure to act
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault or stalking
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future
- While a record or records of arrest(s) will not be used as the sole basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the AHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The AHA may also consider:
    - Any statements made by witnesses, or the participant not included in the police report
    - Whether criminal charges were filed
    - Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
    - Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The AHA will require the participant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family

Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]
If the family includes a person with disabilities, the AHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

AHA Policy
If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, the AHA will determine whether the behavior is related to the disability. If so, upon the family's request, the AHA will determine whether alternative measures are appropriate as a reasonable accommodation. The AHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

12-II.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING

This section describes the protections against termination of assistance that the Violence against Women Act of 2013 (VAWA) provides for victims of domestic violence, dating violence, sexual assault and stalking. For general VAWA requirements, key VAWA definitions, and AHA policies pertaining to notification, documentation, and confidentiality, see section 16-IX of this plan.

VAWA Protections against Termination
VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault or stalking. (Note: The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program, as do the limitations discussed under the next heading.)

First, VAWA provides that AHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the AHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed either as a serious or repeated lease

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

violation by the victim or as good cause to terminate the assistance of the victim [24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault or stalking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, or stalking [24 CFR 5.2005(c)(2)].

Fourth, it gives AHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]
VAWA does not limit the authority of AHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault or stalking so long as the AHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of AHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault or stalking if the AHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define actual and imminent threat to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize AHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

AHA Policy
In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the AHA will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault or stalking

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within a short period of time
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest the AHA's determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

Documentation of Abuse [24 CFR 5.2007]

AHA Policy
When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault or stalking claims protection under VAWA, the AHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.

The AHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the AHA will document the waiver in the individual's file.

Terminating the Assistance of a Domestic Violence Perpetrator
Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the AHA the explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others" without terminating assistance to "or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant" [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the AHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the AHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 Federal Register notice on the applicability of VAWA to HUD programs].

AHA Policy
The AHA will terminate assistance to a family member if the AHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the AHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the AHA by the victim in accordance with this section and section 16-IX.D.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The AHA will also consider the factors in section 12-II.D. Upon such consideration, the AHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the AHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

12-II.F. TERMINATION NOTICE

HUD regulations require AHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family's HAP contract and lease will also terminate when the family's assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

AHA Policy
Whenever a family's assistance will be terminated, the AHA will send a written notice of termination to the family and to the owner. The AHA will also send a form HUD-5380 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other AHA policies, or the circumstances surrounding the termination require.

When the AHA notifies an owner that a family's assistance will be terminated, the AHA will, if appropriate, advise the owner of his/her right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the AHA sends to the family must meet the additional HUD and AHA notice requirements discussed in section 16-III.C of this plan. VAWA 2013 expands notification requirements to require AHAs to provide notice of VAWA rights and the HUD 5382 form when AHA terminates a household's housing benefits.

AHA Policy
Whenever the AHA decides to terminate a family's assistance because of the family's action or failure to act, the AHA will include in its termination notice the VAWA information described in section 16-IX.C of this plan and a form HUD-5382 and form HUD-5380. The AHA will request in writing that a family member wishing to claim protection under VAWA notify the AHA within 14 business days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the AHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record [24 CFR 982.553(d)(2)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; the AHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance as discussed in this section.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY

[24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]
During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations
The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking and the victim is protected from eviction by the Violence against Women Act of 2013 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the AHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law
The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse
The owner may terminate tenancy during the term of the lease if any covered person—meaning any member of the household, a guest, or another person under the tenant's control—commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises)
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises
- Any violent criminal activity on or near the premises
- Any drug-related criminal activity on or near the premises

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault or stalking, if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.E).

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, or stalking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, "other good cause" for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent)

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

If a property is subject to foreclosure, during the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. See Section 13-II.G for a discussion of PHA policies relating to units in foreclosure.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

12-III.C. EVICTION

[24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]
The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the AHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the AHA a copy of any eviction notice (see Chapter 5).

AHA Policy
If the eviction action is finalized in court, the owner must provide the AHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY

[24 CFR 982.310(h), 24 CFR 982.310(h)(4)]
An owner who has grounds to terminate a tenancy is not required to do so and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully (42 U.S.C.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault or stalking is limited by the Violence against Women Act of 2013 (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (See section 12-II.E.)

12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if the AHA has no other grounds for termination of assistance, the AHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS

Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that the AHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the AHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

  AHA Policy
  Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit.

- The family must allow the AHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

  AHA Policy
  The AHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

or an owner's notice to evict, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

- The family must notify the AHA and the owner before moving out of the unit or terminating the lease.

  AHA Policy
  The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to the AHA at the same time the owner is notified.

- The family must promptly give the AHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

The composition of the assisted family residing in the unit must be approved by the AHA. The family must promptly notify the AHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request AHA approval to add any other family member as an occupant of the unit.

AHA Policy
The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The AHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the AHA in writing if any family member no longer lives in the unit.
- If the AHA has given approval, a foster child or a live-in aide may reside in the unit. The AHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when AHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

  AHA Policy
  Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- The family must supply any information requested by the AHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the AHA when the family is absent from the unit.

AHA Policy
Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the AHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and AHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and AHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the AHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 13 – OWNERS

INTRODUCTION

Owners play a major role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term "owner" refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term "owner" includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations.

The chapter is organized in two parts:

> Part I: Owners in the HCV Program. This part discusses the role of an owner in the AHA's HCV program and highlights key owner rights and responsibilities.
>
> Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the AHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including AHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

PART I. OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT & RETENTION

[HCV LANDLORD STRATEGY GUIDEBOOK FOR PHAS]
[HCV GB, pp. 2-4 to 2-6]
Recruitment
AHAs are responsible for ensuring that very low-income families have access to all types and ranges of affordable housing in the AHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the AHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the AHA's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, AHAs must identify and recruit new owners to participate in the program.

If the PHA will be conducting outreach events, the PHA must ensure that notices and communications during outreach events are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities. PHAs must also take

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

reasonable steps to ensure meaningful access to programs to persons with limited English proficiency.

AHA Policy
The AHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The AHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Holding owner recruitment/information meetings at least once a year
- Participating in community-based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations
- Outreach strategies will be monitored for effectiveness, and adapted accordingly

Retention
In addition to recruiting owners to participate in the HCV program, the AHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

AHA Policy
All AHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The AHA will provide owners with a handbook that explains the program, including HUD and AHA policies and procedures, in easy-to-understand language.

The AHA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated AHA contact person.
- Coordinating inspection and leasing activities between the AHA, the owner, and the family.
- Initiating telephone contact with the owner to explain the inspection process and providing an inspection booklet and other resource materials about HUD housing quality standards.
- Providing other written information about how the program operate including answers to frequently asked questions.
- Additional services may be undertaken on an as-needed basis, and as resources permit.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires the AHA to assist families in their housing search by providing the family with a list of landlords or other parties known to the AHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the AHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the AHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

AHA Policy
Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify the AHA. The AHA will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential unassisted tenant. The AHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the AHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate requirements for the approval of an assisted tenancy.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The AHA will inspect the owner's dwelling unit at least annually to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards and policies for HQS inspections at initial lease-up and throughout the family's tenancy.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The AHA must determine that the proposed rent for the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, if the gross rent exceeds the applicable payment standard, the AHA must ensure that the family share does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. The HUD Tenancy Addendum includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The AHA and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.

13-I.C. OWNER RESPONSIBILITIES

[24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Complying with all of the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the AHA information required under the HAP contract
- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease
- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women Reauthorization Act of 2013 (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family (see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); and 24 CFR 982.452(b)(1))

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

13-I.D. OWNER QUALIFICATIONS

The AHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the AHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

Owners Barred from Participation [24 CFR 982.306(a) and (b)]
The AHA must not approve the assisted tenancy if the AHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the AHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]
The AHA must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The AHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]
The AHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the AHA (except a participant commissioner)
- Any employee of the AHA, or any contractor, subcontractor or agent of the AHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict-of-interest requirements, except for members of Congress, for good cause. The AHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the AHA must include the following [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the AHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the AHA or assistance under the HCV program for an eligible AHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of the AHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the AHA has requested a conflict-of-interest waiver, the AHA may not execute the HAP contract until HUD has made a decision on the waiver request.

AHA Policy
In considering whether to request a conflict of interest waiver from HUD, the AHA will consider certain factors such as consistency of the waiver with state and local laws, the existence of alternative housing available to families, the individual circumstances of a particular family, the specific duties of individuals whose positions present a possible conflict of interest, the nature of any financial investment in the property and plans for disclosure/divestiture, and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]
HUD regulations permit the AHA to disapprove a request for tenancy for various actions and inactions of the owner.

If the AHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

AHA Policy
The AHA will refuse to approve a request for tenancy if the AHA becomes aware that any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has engaged in any drug-related criminal activity or any violent criminal activity;
- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

units leased with project-based Section 8 assistance or leased under any other federal housing program;

- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the AHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;
- The owner has a history or practice of renting units that fail to meet state or local housing codes; or
- The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the AHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the AHA may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

The following represents AHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

AHA Policy

The AHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

13-I.E. NON-DISCRIMINATION

[HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the AHA.

The owner must cooperate with the AHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with the AHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PART II. HAP CONTRACTS

13-II.A. OVERVIEW

The HAP contract represents a written agreement between the AHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the AHA's obligations. Under the HAP contract, the AHA agrees to make housing assistance payments to the owner on behalf of the family approved by the AHA to occupy the unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and use their assistance to lease the space for the manufactured home. See chapter 15 for a discussion of any special housing types included in the AHA's HCV program.

When the AHA has determined that the unit meets program requirements and the tenancy is approvable, the AHA and owner must execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT CONTENTS

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic contract information: the names of the tenant and all household members, the address of the contract unit, start and end dates of initial lease term, the amount of initial monthly rent to owner, the amount of initial housing assistance payment, the utilities and appliances to be supplied by owner and tenant, and the signatures of the AHA representative and owner [HCV Guidebook, pp. 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, AHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. AHA policy on the amount of security deposit an owner may collect is found in Chapter 9.

AHAs also have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the AHA is deemed received by the owner (e.g., upon mailing by the AHA or actual receipt by the owner).

AHA Policy
The AHA has not adopted a policy that defines when the housing assistance payment by the AHA is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- AHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- AHA and HUD Access to Premises and Owner's Records
- Exclusion of Third-Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the AHA. The tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the AHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month. The amount of the HAP payment is determined according to the policies described in Chapter 6 and is subject to change during the term of the HAP contract. The AHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the AHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and the AHA is not responsible for payment of the family share of rent.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The family's share of the rent cannot be more than the difference between the rent to owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the AHA, the excess amount must be returned immediately. If the AHA determines that the owner is not entitled to all or a portion of the HAP, the AHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD 52641].

By endorsing the monthly check from the AHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments [24 CFR 982.451(a)(5)]

The AHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for late penalties if the AHA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

The AHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the AHA's control. In addition, late payment penalties are not required if the AHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Termination of HAP Payments [24 CFR 982.311(b)]
The AHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the AHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

AHA Policy
The owner must inform the AHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the AHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant and provide the AHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the AHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the AHA of the date when the family actually moves from the unit, or the family is physically evicted from the unit.

13-II.D. BREACH OF HAP CONTRACT

[24 CFR 982.453]
Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the AHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The AHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination of the HAP contract. The AHA may also obtain additional relief by judicial order or action.

The AHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The AHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

AHA Policy
Before the AHA invokes a remedy against an owner, the AHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the AHA will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the AHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

13-II.E. HAP CONTRACT TERM & TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The AHA terminates the HAP contract;
- The AHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since the AHA made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by the AHA;
- The Annual Contributions Contract (ACC) between the AHA and HUD expires
- The AHA elects to terminate the HAP contract.

AHA Policy
The AHA may elect to terminate the HAP contract in each of the following situations:

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
- The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;
- The unit does not meet HQS [24 CFR 982.404] – see chapter 8;
- The family breaks up [HUD Form 52641] – see chapter 3;
- The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the AHA terminates the HAP contract, the AHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

AHA Policy
In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the AHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period and must return to the AHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT

[HUD-52641]
The HAP contract cannot be assigned to a new owner without the prior written consent of the AHA.

An owner under a HAP contract must notify the AHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the AHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the AHA finds acceptable. The new owner must provide the AHA with a copy of the executed agreement.

AHA Policy
Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The AHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 10 business days of receiving the owner's request, the AHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the AHA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;
- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- A certification that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the AHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the AHA will process the leasing in accordance with the policies in Chapter 9.

13-II.G. FORECLOSURE

[Notice PIH 2010-49]
Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). During the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. Further, the new owner assumes interest in the lease between the prior owner and the tenant and to the HAP contract.

Any state or local law that provides longer time periods or other additional protections for tenants also applies.

AHA Policy
If a property is in foreclosure, the AHA will make all reasonable efforts to determine the status of the foreclosure and ownership of the property and will continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

The AHA will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. This will include a request for owner information, including a tax identification number and payment instructions from the new owner. Even

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

The AHA will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.

In the event that the AHA is unable to make HAP payments to the new owner due to an action or inaction by the new owner that prevents such payments (e.g., rejection of payments or failure to maintain the property according to HQS), or due to an inability to identify the new owner, the AHA will either use the funds to pay:

- The utilities that are the owner's responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, the AHA shall notify the owner within a reasonable time after making the utility payment; or
- For the family's reasonable moving costs, including security deposit costs.

The AHA will also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract.

See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 14 – PROGRAM INTEGRITY

INTRODUCTION

The AHA is committed to ensuring that subsidy funds made available to the AHA are spent in accordance with HUD requirements.

This chapter covers HUD and AHA policies designed to prevent, detect, investigate, and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents AHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the AHA must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, & INVESTIGATING ERRORS AND PROGRAM ABUSE

14-I.A. PREVENTING ERRORS & PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide AHAs with a powerful tool for preventing errors and detecting program abuse. AHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. AHAs are further required to:

- Provide applicants and participants with form HUD-52675, "Debts Owed to AHAs and Terminations"
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

AHA Policy
To ensure that the AHA's HCV program is administered according to the highest ethical and legal standards, the AHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The AHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

The AHA will provide each applicant and participant with a copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

The AHA will provide each applicant and participant with a copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12. In addition,

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

the AHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The AHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key AHA forms and form letters that request information from a family or owner.

AHA staff will be required to review and explain the contents of all HUD and AHA-required forms prior to requesting family member signatures.

At every regular reexamination, AHA staff will explain any changes in HUD regulations or AHA policy that affect program participants.

The AHA will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.

The AHA will provide owners with ongoing information about the program, with an emphasis on actions and situations to avoid.

The AHA will provide each AHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term error refers to an unintentional error or omission. Program abuse or fraud refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

14-I.B. DETECTING ERRORS & PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the AHA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data
Under the Section 8 Management Assessment Program (SEMAP), HUD requires the AHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

AHA Policy
In addition to the SEMAP quality control requirements, the AHA will employ a variety of methods to detect errors and program abuse.

The AHA routinely will use HUD and other non-HUD sources of up-front income verification. This includes The Work Number and any other private or public databases available to the AHA as well as credit reports.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The AHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all AHAs that expend $500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of AHA activities and notifies the AHA of errors and potential cases of program abuse.

AHA Policy

The AHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the AHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

AHA Policy

The AHA will encourage staff, program participants, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS & PROGRAM ABUSE

When the AHA Will Investigate

AHA Policy

The AHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the AHA to investigate, the allegation must contain at least one independently verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The AHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

Consent to Release of Information [24 CFR 982.516]

The AHA may investigate possible instances of error or abuse using all available AHA and public records. If necessary, the AHA will require HCV families to sign consent forms for the release of additional information.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Analysis and Findings

AHA Policy
The AHA will base its evaluation on a preponderance of the evidence collected during its investigation.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

For each investigation the AHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the AHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the AHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

AHA Policy
In the case of family-caused errors or program abuse, the AHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the AHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

AHA Policy
The AHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the AHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: CORRECTIVE MEASURES & PENALTIES

14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections
Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the AHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

> **AHA Policy**
> Increases in the family share will be implemented on the first of the month following a written 30-day notice.
>
> Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement
Whether the family or owner is required to reimburse the AHA or the AHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

14-II.B. FAMILY-CAUSED ERRORS & PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the AHA to use incorrect information provided by a third party.

Family Reimbursement to AHA [HCV GB pp. 22-12 to 22-13]

> **AHA Policy**
> In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The AHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the AHA will terminate the family's assistance in accordance with the policies in Chapter 12.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Reimbursement to Family [HCV GB p. 22-12]

AHA Policy
The AHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

Prohibited Actions
An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the AHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

AHA Policy
Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by the AHA for rent, security deposit, and additional services
- Offering bribes or illegal gratuities to the AHA Board of Commissioners, employees, contractors, or other AHA representatives
- Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the AHA on the family's behalf
- Use of a false name or the use of falsified, forged, or altered documents
- Intentional misreporting of family information or circumstances (e.g., income, family composition)
- Omitted facts that were obviously known by a family member (e.g., not reporting employment income)
- Admission of program abuse by an adult family member

AHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse
In the case of program abuse caused by a family the AHA may, at its discretion, impose any of the following remedies.

- The AHA may require the family to repay excess subsidy amounts paid by the AHA, as described earlier in this section.
- The AHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- The AHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The AHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

Owner Reimbursement to the AHA

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the AHA any excess subsidy received. The AHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the AHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

AHA Policy

In cases where the owner has received excess subsidy, the AHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to the AHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

AHA Policy

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by the AHA
- Charging a security deposit other than that specified in the family's lease
- Charging the family for services that are provided to unassisted tenants at no extra charge
- Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit
- Knowingly accepting incorrect or excess housing assistance payments
- Offering bribes or illegal gratuities to the AHA Board of Commissioners, employees, contractors, or other AHA representatives
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the AHA
- Residing in the unit with an assisted family
- Committing sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Retaliating against any applicant or participant reporting/alleging sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2

Remedies and Penalties
When the AHA determines that the owner has committed program abuse, the AHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any AHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14 II.E.

14-II.D. AHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of AHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of an AHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the AHA personnel policy.

AHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Repayment to the AHA
Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by AHA staff [HCV GB. 22-12].

AHA Reimbursement to Family or Owner
The AHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the AHA's administrative fee reserves [HCV GB p. 22-12].

Prohibited Activities

AHA Policy
Any of the following will be considered evidence of program abuse by AHA staff:

- Failing to comply with any HCV program requirements for personal gain
- Failing to comply with any HCV program requirements as a result of a conflict-of-interest relationship with any applicant, participant, or owner
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the AHA
- Disclosing confidential or proprietary information to outside parties

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Gaining profit as a result of insider knowledge of AHA activities, policies, or practices
- Misappropriating or misusing HCV funds
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program
- Committing any other corrupt or criminal act in connection with any federal housing program

14-II.E. CRIMINAL PROSECUTION

AHA Policy
When the AHA determines that program abuse by an owner, family, or AHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the AHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

14-II.F. FRAUD & PROGRAM ABUSE RECOVERIES

The AHA may retain a portion of program fraud losses that the AHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The AHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the AHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the AHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the AHA related to the collection, these costs must be deducted from the amount retained by the AHA.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 15 – SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M]

INTRODUCTION

The AHA may permit a family to use any of the special housing types discussed in this chapter. However, the AHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that AHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The AHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

AHA Policy
Families will be permitted to use any special housing types.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership (NOT APPLICABLE TO AHA)

PART I: SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

15-I.A. OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION

The payment standard for SRO housing is 75 percent of the zero-bedroom payment standard amount on the AHA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero-bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

15-I.C. HOUSING QUALITY STANDARDS (HQS)

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.
  Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards, the requirements discussed below apply [24 CFR 982.605].
- *Sanitary Facilities*: At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.
  Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PART II: CONGREGATE HOUSING

[24 CFR 982.606 through 982.609]

15-II.A. OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the AHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The AHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the AHA must use the payment standard for a zero-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the AHA must use the one-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

15-II.C. HOUSING QUALITY STANDARDS

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART III: GROUP HOME

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

15-III.A. OVERVIEW

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the AHA, a live-in aide may live in the group home with a person with disabilities. The AHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be zero- or one-bedroom, depending on the AHA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorate share of the payment standard for the group home size. The prorate share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorate share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorate portion of the reasonable rent for the group home. In determining reasonable rent, the AHA

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities*: A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service*: Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material*: To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
    - Dangerous walks or steps
    - Instability
    - Flooding, poor drainage
    - Septic tank back-ups
    - Sewage hazards
    - Mud slides
    - Abnormal air pollution
    - Smoke or dust
    - Excessive noise
    - Vibrations or vehicular traffic
    - Excessive accumulations of trash
    - Vermin or rodent infestation, and
    - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART IV: SHARED HOUSING

[24 CFR 982.615 through 982.618]

15-IV.A. OVERVIEW

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the AHA, a live-in aide may reside with the family to care for a person with disabilities. The AHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the AHA should consider whether sanitary and food preparation areas are private or shared.

15-IV.C. HOUSING QUALITY STANDARDS

The AHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- Facilities Available for the Family: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- Space and Security: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A zero-bedroom or one-bedroom unit may not be used for shared housing.

PART V: COOPERATIVE HOUSING

[24 CFR 982.619]

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged "rent" a cooperative member is charged a "carrying charge."

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

15-V.C. HOUSING QUALITY STANDARDS

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PART VI: MANUFACTURED HOMES

[24 CFR 982.620 through 982.624]

15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts that is built on a permanent chassis and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and the AHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. AHAs may, but are not required to, provide assistance for such families.

15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

Family Income
In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

Lease and HAP Contract
There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE & HAP CALCULATION

Payment Standards
The FMR for a manufactured home space is generally 40 percent of the published FMR for a two-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. The AHA may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

Utility Allowance
The AHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Space Rent
The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

Housing Assistance Payment
The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

Rent Reasonableness
Initially, and annually thereafter the AHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The AHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

15-VI.D. HOUSING QUALITY STANDARDS

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

Manufactured Home Tie-Down
A manufactured home must be placed on the site in a stable manner and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

PART VII: HOMEOWNERSHIP

AHA DOES NOT CURRENTLY HAVE A HOME OWNERSHIP PROGRAM.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 16 – PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes the AHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to the AHA. This part describes policies for recovery of monies that the AHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the AHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect AHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the AHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the AHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the AHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PART I: ADMINISTRATIVE FEE RESERVE

[24 CFR 982.155]
The AHA will maintain administrative fee reserves, or unrestricted net position (UNP) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for an AHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice PIH 2012-9 cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNP account from funding provided prior to 2004 may be used for "other housing purposes permitted by state and local law," in accordance with 24 CFR 982.155(b)(1).

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP Account and may direct the PHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at 24 CFR 982.155(b)(3).

HUD requires the AHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval.

AHA Policy
Expenditures from the UNP account will be made in accordance with all applicable federal requirements. AHA shall submit at least annually a budget for approval to the Board of Commissioners that outlines the use of reserves in its operations and separately for the following items:

1) Contingent on available funds, the AHA will use administrative fee reserves to assist with applicants and current voucher holders who are in housing search mode to find and obtain affordable housing opportunities. Funds may be used for the following purposes:
    - **Application fees/non-refundable administrative or processing fees/refundable application deposit assistance**. The AHA may choose to assist the family with some or all these expenses.
    - **Holding fees.** Fees an owner requests that are rolled into the security deposit after an application is accepted but before a lease is signed. The AHA may cover part or all of the holding fee for units where the fee is required by the owner after a tenant's application has been accepted but before the lease signing. The AHA and owner must agree how the holding fee gets rolled into the deposit, and under what conditions the fee will be returned. In general, owners need to accept responsibility for making needed repairs to a unit required by the initial housing quality standards (HQS) inspections and can only keep the holding fee if the client is at fault for not entering into a lease.
    - **Security deposit assistance**. The amount of the security deposit assistance may not exceed the lesser of two months' rent to owner, the maximum

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

security deposit allowed under applicable state and/or local law, or the actual security deposit required by the owner. The AHA may pay the security deposit assistance directly to the owner or may pay the assistance to the family. If paid to the family, the AHA will require documentation that the family paid the security deposit. The AHA will require the owner or family to return the security deposit assistance to the AHA at such time the deposit is returned by the owner (less any amounts retained by the owner). Security deposit assistance returned to the AHA will be used only for those purposes described in this policy or required by HUD.

- **Utility deposit assistance**. The AHA may provide utility deposit assistance for some or all of the family's utility deposit expenses. Assistance can be provided for deposits (including connection fees) required for the utilities to be supplied by the tenant under the lease. The AHA may pay the utility deposit assistance directly to the utility company or may pay the assistance to the family. If paid to the family, the AHA will require documentation the family paid the utility deposit. The AHA will require the utility supplier or family to return the utility deposit assistance to the AHA at such time the deposit is returned by the utility supplier (less any amounts retained by the utility supplier). Utility deposit assistance returned to the AHA will be used only for those purposes described in this policy or required by HUD.
- **Renter's insurance if required by the lease**. The PHA may choose to assist the family with some or all this cost. Any assistance that is returned to the AHA after its initial or subsequent use may only be applied to the eligible uses defined in Notice PIH 2022-18 (or subsequent notice) or other HCV administrative costs. An Addendum will be added to the HAP contract specifying the conditions wherein AHA will recoup these service fees.

Preferences for the use of these funds will be given to applicants who are participating in the AHA intake process for Admission to an AHA voucher program. Consideration for use of these funds may also be given to current voucher holders who have been in housing search mode for longer than 30 consecutive days. Requests will be processed on a first come first serve basis with preference given to applicants and with a maximum of $1,500 allowed per household. Each request will be reviewed to confirm that requests are eligible expenses, are reasonable in relation to current market conditions, are not above the allowed maximum, and have appropriate supporting documentation.

2) The Use of Reserves to assist in making participating Section 8 Properties physically accessible to those with disabilities and/or development of project-based vouchers according to HUD regulations.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART II: SETTING PROGRAM STANDARDS & SCHEDULES

16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the AHA to adapt the program to local conditions. This part discusses how the AHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

AHA Policy
Copies of the payment standard and utility allowance schedules are available for review in the AHA's offices during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

The AHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

Establishing and updating the AHA passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-I.G.).

16-II.B. PAYMENT STANDARDS

[24 CFR 982.503; HCV GB, Chapter 7]
The payment standard sets the maximum subsidy payment a family can receive from the AHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The AHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the AHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the AHA may establish a single payment standard amount for the whole FMR area or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the AHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Updating Payment Standards

When HUD updates its FMRs, the AHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the AHA to make further adjustments if it determines that rent burdens for assisted families in the AHA's jurisdiction are unacceptably high [24 CFR 982.503(g)].

AHA Policy

The AHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" the AHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

Funding Availability: The AHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The AHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

Rent Burden of Participating Families: Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the AHA will consider increasing the payment standard. In evaluating rent burdens, the AHA will not include families renting a larger unit than their family unit size.

Quality of Units Selected: The AHA may review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

Changes in Rent to Owner: The AHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

Unit Availability: The AHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

Lease-up Time and Success Rate: The AHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Effective dates of changes to payment standard amounts will be determined at the time of update. The PHA will always ensure the payment standards will be within the basic range.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Exception Payment Standards [982.503(c)(5), Notice PIH 2018-01]
A non-SAFMR PHA may establish an exception payment standard for a zip code area of up to and including 110 percent of the SAFMR determined by HUD for that zip code area. Regardless of the level of the exception payment standard compared to the metropolitan area FMRs (MAFMRs), the PHA must send an email to SAFMRs@hud.gov to notify HUD that it has adopted an exception payment standard based on the SAFMR. A PHA that adopts an exception payment standard pursuant to this authority must apply it to the entire ZIP code area, for both its HCV, and if applicable, its PBV program. For the PBV program, this means that the rent to owner may not exceed the new exception payment standard amount, provided the rent is still reasonable. A PHA that adopts an exception payment standard area must revise its briefing materials to make families aware of the exception payment standard and the area that it covers.

Voluntary Use of Small Area FMRs [24 CFR 982.503, Notice PIH 2018-01]
AHAs that administer vouchers in a metropolitan area where the adoption of SAFMRs is not required may request approval from HUD to voluntarily adopt SAFMRs. SAFMRs may be voluntarily adopted for one or more zip code areas.

AHA Policy
AHA will not voluntarily adopt the use of SAFMRs except to establish exception payment standards in certain zip code areas.

Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26]
Unit-by-unit exceptions to the AHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the AHA's payment standard schedule.

When needed as a reasonable accommodation, the AHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. The AHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

AHA Policy
A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the AHA must determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]
If a substantial percentage of families have difficulty finding a suitable unit, the AHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

HUD, a success rate payment standard allows the AHA to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, the AHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The AHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The AHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the AHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the AHA's jurisdiction within the FMR area.

Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]
The AHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

16-II.C. UTILITY ALLOWANCES

[24 CFR 982.517]
An AHA-established utility allowance schedule is used in determining family share and AHA subsidy. The AHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the AHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the AHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the HCV Guidebook provides detailed guidance to the AHA about establishing utility allowance schedules.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Air Conditioning
An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

> **AHA Policy**
> The AHA has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before the AHA will apply this allowance to a family's rent and subsidy calculations.

Reasonable Accommodation
HCV program regulations require AHA to approve a utility allowance amount higher than shown on the AHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the AHA will approve an allowance for air-conditioning, even if the AHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

Utility Allowance Revisions
The AHA must review its schedule of utility allowances each year and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The AHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

PART III: INFORMAL REVIEWS & HEARINGS

16-III.A. OVERVIEW

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the AHA that may adversely affect them. AHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of AHA decisions is called the "informal review." For participants (or applicants denied admission because of citizenship issues), the appeal process is called an "informal hearing." AHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554], and need not be as

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

elaborate as the informal hearing requirements [Federal Register 60, no. 127 (3 July 1995): 34690].

Decisions Subject to Informal Review [24 CFR 982.554(a) and (c)]
The AHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the AHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are not required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the AHA
- General policy issues or class grievances
- A determination of the family unit size under the AHA subsidy standards
- AHA determination not to approve an extension of a voucher term
- AHA determination not to grant approval of the tenancy
- AHA determination that the unit is not in compliance with the HQS
- AHA determination that the unit is not in accordance with the HQS due to family size or composition

  AHA Policy
  The AHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the AHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

Notice to the Applicant [24 CFR 982.554(a)]
The AHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the AHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

Scheduling an Informal Review

AHA Policy
A request for an informal review must be made in writing and delivered to the AHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the AHA's denial of assistance.

The AHA must schedule and send written notice of the informal review within 15business days of the family's request.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

If the informal review will be conducted remotely, at the time AHA notifies the family of the informal review, the family will be informed:

- Regarding the processes to conduct a remote informal review;
- That, if needed, AHA will provide technical assistance prior to and during the informal review; and
- That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal review, the family may inform AHA and AHA will assist the family in either resolving the issues or allow the family to participate in an in-person informal review, as appropriate.

Informal Review Procedures [24 CFR 982.554(b)]
The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of the AHA.

Remote Informal Reviews [Notice PIH 2020-32]
There is no requirement that informal reviews be conducted in-person and, as such, HUD allows PHAs to conduct all or a portion of their informal review remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal reviews, applicants may still request an in-person informal review, as applicable.

AHA Policy
The AHA has the sole discretion to require that informal reviews be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the AHA will conduct an informal review remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the informal review, or if the applicant believes an in-person informal review would create an undue health risk. The AHA will consider other reasonable requests for a remote informal review on a case-by-case basis.

Ensuring Accessibility for Persons with Disabilities and LEP Individuals
As with in-person informal reviews, the platform for conducting remote informal reviews must be accessible to persons with disabilities and the informal review must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal review process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal review is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote informal review, and the PHA should consider whether postponing the remote informal review to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal reviews, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal reviews.

Conducting Remote Informal Reviews

The HA must ensure that the lack of technology or inability to use technology for remote informal reviews does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal review and, if the family does not have the proper technology to fully participate, either postpone the informal review or provide an alternative means of access.

As with in-person informal reviews, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal review. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA must ensure that the applicant has the right to hear and be heard. All PHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations at 24 CFR 982.554 and guidance specified in Notice PIH 2020-32.

AHA Policy

The PAA will conduct remote informal reviews via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal review will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal review will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

At least five business days prior to scheduling the remote review, AHA will provide the family with login information and/or conferencing call-in information and an electronic and/or physical copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify AHA of any known barriers. AHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

If the informal review is to be conducted remotely, AHA will require the family to provide any documents directly relevant to the informal review at least 24 hours before the scheduled review through the mail, via email, or text. AHA will scan and email copies of these documents to the AHA representative the same day.

Documents will be shared electronically whenever possible.

AHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal review to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.

AHA will ensure that all electronic information stored or transmitted with respect to the informal review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

Informal Review Decision [24 CFR 982.554(b)]
The AHA must notify the applicant of the AHA's final decision, including a brief statement of the reasons for the final decision.

AHA Policy
In rendering a decision, the AHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice to the family.
- The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. The AHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the AHA will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, the AHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The AHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS

[24 CFR 982.555]
AHAs must offer an informal hearing for certain AHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the AHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the AHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and AHA policies.

The AHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

Decisions Subject to Informal Hearing
Circumstances for which the AHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the AHA utility allowance schedule
- A determination of the family unit size under the AHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under AHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the AHA
- General policy issues or class grievances

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Establishment of the AHA schedule of utility allowances for families in the program
- AHA determination not to approve an extension of a voucher term
- AHA determination not to approve a unit or tenancy
- AHA determination that a unit selected by the applicant is not in compliance with the HQS
- AHA determination that the unit is not in accordance with HQS because of family size
- A determination by the AHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

AHA Policy
AHA will only offer participants the opportunity for an informal hearing when required to by the regulations, and if AHA denies a request for a reasonable accommodation (see Chapter 2).

Remote Informal Hearings [Notice PIH 2020-32]
There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

AHA Policy
AHA has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the AHA will conduct an informal hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have childcare or transportation that would enable them to attend the informal hearing, or if the participant believes an in-person hearing would create an undue health risk. AHA will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

Ensuring Accessibility for Persons with Disabilities and LEP Individuals
As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

from all aspects of the informal hearing process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal hearings is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote informal hearing, and the PHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.

Conducting Informal Hearings Remotely

The PHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations at 24 CFR 982.555 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

AHA Policy

AHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote hearing, AHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

advise the family of technological requirements for the hearing and request the family notify AHA of any known barriers. AHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

AHA will follow up with a phone call and/or email to the family at least one business day prior to the remote informal hearing to ensure that the family received all information and is comfortable accessing the video conferencing or call-in platform.

AHA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP. If any participant, representative, advocate, witness, AHA representative, or hearing officer is unable to effectively utilize the videoconferencing platform, the informal hearing will be conducted by telephone conferencing call-in.

Whether the informal hearing is to be conducted via videoconferencing or telephone call-in, the AHA will provide all parties login information and/or telephone call-in information before the hearing.

Informal Hearing Procedures
Notice to the Family [24 CFR 982.555(c)]
When the AHA makes a decision that is subject to informal hearing procedures, the AHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the AHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the AHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

AHA Policy
In cases where the AHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The proposed action or decision of the AHA.
- A brief statement of the reasons for the decision, including the regulatory reference.
- The date the proposed action will take place.
- A statement of the family's right to an explanation of the basis for the AHA's decision.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.
- To whom the hearing request should be addressed.
- An explanation of where to find AHA's hearing procedures.
- That the family may request a remote informal hearing

Scheduling an Informal Hearing [24 CFR 982.555(d)]
When an informal hearing is required, the AHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

AHA Policy
A request for an informal hearing must be made in writing and delivered to the AHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the AHA's decision or notice to terminate assistance.

AHA must schedule and send written notice of the informal hearing to the family.

- If the AHA hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:
- Regarding the processes involved in a remote informal hearing;
- That the AHA will provide technical assistance prior to and during the informal hearing, if needed; and
- That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform AHA and AHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.
- The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the AHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the AHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The AHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Pre-Hearing Right to Discovery [24 CFR 982.555(e)]
Participants and the AHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any AHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the AHA does not make the document available for examination on request of the family, the AHA may not rely on the document at the hearing.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The AHA hearing procedures may provide that the AHA must be given the opportunity to examine at the AHA offices before the hearing, any family documents that are directly relevant to the hearing. The AHA must be allowed to copy any such document at the AHA's expense. If the family does not make the document available for examination on request of the AHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, documents include records and regulations.

AHA Policy
The family will be allowed to copy any documents related to the hearing at no cost to the family . The family must request discovery of AHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

If the hearing will be conducted remotely, the AHA will compile a hearing packet, consisting of all documents the AHA intends to produce at the informal hearing. The AHA will send copies of the hearing packet to the family, the family's representatives, if any, and the hearing officer at least three days before the scheduled remote informal hearing. The original hearing packet will be in the possession of the AHA representative and retained by the AHA.

Documents will be shared electronically whenever possible.

The AHA hearing procedures may provide that the PHA must be given the opportunity to examine at the AHA offices before the hearing any family documents that are directly relevant to the hearing. The AHA must be allowed to copy any such document at the AHA's expense. If the family does not make the document available for examination on request of the AHA, the family may not rely on the document at the hearing.

AHA Policy
For in-person hearings, the AHA will not require pre-hearing discovery by the AHA of family documents directly relevant to the hearing.

If the informal hearing is to be conducted remotely, the AHA will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing through the mail, via email, or text. The AHA will scan and email copies of these documents to the hearing officer and the AHA representative the same day.

Documents will be shared electronically whenever possible.

Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]
At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Informal Hearing Officer [24 CFR 982.555(e)(4)]
Informal hearings will be conducted by a person or persons approved by the AHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

AHA Policy
The AHA has designated the following to serve as hearing officers:

- Hearing Officers at City of Albuquerque Office of Administrative Hearings

Attendance at the Informal Hearing

AHA Policy
Hearings may be attended by a hearing officer and the following applicable persons:

- An AHA representative(s) and any witnesses for the AHA
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by the AHA as a reasonable accommodation for a person with a disability

Conduct at Hearings
The person who conducts the hearing may regulate the conduct of the hearing in accordance with the AHA's hearing procedures [24 CFR 982.555(4)(ii)].

AHA Policy
The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

Evidence [24 CFR 982.555(e)(5)]
The AHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

AHA Policy
Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses.

Documentary evidence: a writing which is relevant to the case, for example, a letter written to the AHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence based not on a witness' personal knowledge. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If either the PHA (or the family, if required in a remote hearing) fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Hearing Officer's Decision [24 CFR 982.555(e)(6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

AHA Policy

In rendering a decision, the hearing officer will consider the following matters:

AHA Notice to the Family: The hearing officer will determine if the reasons for the AHA's decision are factually stated in the Notice.

Discovery: The hearing officer will determine if the AHA and the family were given the opportunity to examine any relevant documents in accordance with AHA policy.

AHA Evidence to Support the AHA Decision: The evidence consists of the facts presented. Evidence is not conclusion, and it is not argument. The hearing officer will evaluate the facts to determine if they support the AHA's conclusion.

Validity of Grounds for Termination of Assistance (when applicable): The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and AHA policies. If the grounds for termination are not specified in the regulations or in compliance with AHA policies, then the decision of the AHA will be overturned.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The hearing officer will issue a written decision to the family and the AHA no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of the AHA representative; and
- Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the AHA's decision.

Order: The hearing report will include a statement of whether the AHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the AHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the AHA to restore the participant's program status.

Procedures for Rehearing or Further Hearing

AHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the AHA will take effect and another hearing will not be granted.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Notice of Final Decision [24 CFR 982.555(f)]
The AHA is not bound by the decision of the hearing officer for matters in which the AHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state, or local laws.

If the AHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the AHA must promptly notify the family of the determination and the reason for the determination.

AHA Policy
The AHA will mail a "Notice of Final Decision" including the hearing officer's report to the participant and their representative. This notice will be sent by first-class mail, postage pre-paid, with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof of mailing will be maintained in the AHA's file.

16-III.D. HEARING & APPEAL PROVISIONS FOR NONCITIZENS

[24 CFR 5.514]
Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the AHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the AHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]
The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- That the family has a right to request an informal hearing with the AHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

USCIS Appeal Process [24 CFR 5.514(e)]
When the AHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the AHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the AHA with a copy of the written request for appeal and the proof of mailing.

AHA Policy
The AHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the AHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the AHA, of its decision. When the USCIS notifies the AHA of the decision, the AHA must notify the family of its right to request an informal hearing.

AHA Policy
The AHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]
After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the AHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the AHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer
The AHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

Evidence
The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the AHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

> **AHA Policy**
> The family will be allowed to copy any documents related to the hearing at a cost of $.50 per page. The family must request discovery of AHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the AHA, and to confront and cross-examine all witnesses on whose testimony or information the AHA relies.

Representation and Interpretive Services
The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the AHA, as may be agreed upon by the two parties.

Recording of the Hearing
The family is entitled to have the hearing recorded by audiotape. The AHA may but is not required to provide a transcript of the hearing.

> **AHA Policy**
> The AHA will not provide a transcript of an audio taped hearing.

Hearing Decision
The AHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]
After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the AHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the AHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

Retention of Documents [24 CFR 5.514(h)]
The AHA must retain for a minimum of 5 years the following documents that may have been submitted to the AHA by the family, or provided to the AHA as part of the USCIS appeal or the AHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

PART IV: OWNER OR FAMILY DEBTS TO THE AHA

16-IV.A. OVERVIEW

AHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the AHA [24 CFR 982.54]. This part describes the AHA's policies for recovery of monies owed to the AHA by families or owners.

AHA Policy
When an action or inaction of an owner or participant results in the overpayment of housing assistance, the AHA holds the owner or participant liable to return any overpayments to the AHA.

The AHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to the AHA, the AHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil lawsuit
- State income tax set-off program

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

16-IV.B. REPAYMENT POLICY

Owner Debts to the AHA

AHA Policy
Any amount due to the AHA by an owner must be repaid by the owner within 30 days of the AHA determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, the AHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments the AHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the AHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the AHA will ban the owner from future participation in the program and pursue other modes of collection.

Family Debts to the AHA

AHA Policy
Any amount owed to the AHA by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, the AHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the AHA will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

Repayment Agreement [24 CFR 792.103]

The term repayment agreement refers to a formal written document signed by a tenant or owner and provided to the AHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

General Repayment Agreement Guidelines for Families

Down Payment Requirement

AHA Policy
Before executing a repayment agreement with a family, the AHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the AHA that a down payment of 10 percent would impose an undue hardship, the AHA may, in its sole discretion, require a lesser percentage or waive the requirement.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Payment Thresholds

Notice PIH 2017-12 recommends that the total amount that a family must pay each month—the family's monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family's monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2017-12 acknowledges that PHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

AHA Policy

The AHA has established the following thresholds for repayment of debts:

- Amounts between $3,000 and the federal or state threshold for criminal prosecution must be repaid within 36 months
- Amounts between $2,000 and $2,999 must be repaid within 30 months
- Amounts between $1,000 and $1,999 must be repaid within 24 months
- Amounts under $1,000 must be repaid within 12 months

If a family can provide evidence satisfactory to the AHA that the threshold applicable to the family's debt would impose an undue hardship, the AHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, the AHA will consider all relevant information, including the following:

- The amount owed by the family to the AHA
- The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family's control
- The family's current and potential income and expenses
- The family's current family share, as calculated under 24 CFR 982.515
- The family's history of meeting its financial responsibilities

Execution of the Agreement

AHA Policy

Any repayment agreement between the AHA and a family must be signed and dated by the AHA and by the head of household and spouse/cohead (if applicable).

Due Dates

AHA Policy

All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.

Late or Missed Payments

AHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the AHA, the AHA will send the family a delinquency notice giving the family 10 business days to make the late payment.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the AHA will terminate assistance in accordance with the policies in Chapter 12.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the AHA will terminate assistance in accordance with the policies in Chapter 12.

No Offer of Repayment Agreement

AHA Policy
The AHA generally will not enter into a repayment agreement with a family if there has already been or is currently a repayment agreement in place with the family or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

Repayment Agreements Involving Improper Payments
Notice PIH 2017-12 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the AHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the AHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

16-V.A. OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the PHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of "troubled" are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

plan. In addition, PHAs that are designated "troubled" may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].

- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

16-V.B. SEMAP CERTIFICATION

[24 CFR 985.101]
PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by AHA board resolution and signed by the AHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other AHA fiscal year. HUD will assess such PHAs annually if the PHA elects to have its performance assessed on an annual basis; or is designated as "troubled" [24 CFR 985.105].

Failure of a PHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of "troubled."

A PHA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the PHA's SEMAP certification, HUD will rate the PHA's performance under each SEMAP indicator in accordance with program requirements.

HUD Verification Method
Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The PHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

16-V.C. SEMAP INDICATORS

[24 CFR 985.3 and form HUD-52648]
The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

A PHA that expends less than $300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not rated under SEMAP indicators 1-7.

SEMAP Indicators
Indicator 1: Selection from the waiting list **Maximum Score: 15** • This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list. • Points are based on the percent of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.
Indicator 2: Rent reasonableness **Maximum Score: 20** • This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units. • Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.
Indicator 3: Determination of adjusted income **Maximum Score: 20** • This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent. • Points are based on the percent of files that are calculated and verified correctly, according to the PHA's quality control sample.
Indicator 4: Utility allowance schedule **Maximum Score: 5** • This indicator shows whether the PHA maintains an up-to-date utility allowance schedule. • Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.
Indicator 5: HQS quality control inspections **Maximum Score: 5** • This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections. • Points are based on whether the required quality control reinspections were completed, according to the PHA's certification.
Indicator 6: HQS enforcement **Maximum Score: 10** • This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all HQS deficiencies in accordance with required time frames, according to the PHA's certification.

Indicator 7: Expanding housing opportunities
Maximum Points: 5
- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA's certification.

Indicator 8: FMR limit and payment standards
Maximum Points: 5 points
- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.

Indicator 9: Annual reexaminations
Maximum Points: 10
- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

Indicator 10: Correct tenant rent calculations
Maximum Points: 5
- This indicator shows whether the PHA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

Indicator 11: Pre-contract HQS inspections
Maximum Points: 5
- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

Indicator 12: Annual HQS inspections
Maximum Points: 10
- This indicator shows whether the PHA inspects each unit under contract at least annually.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

Indicator 13: Lease-up
Maximum Points: 20 points

- This indicator shows whether the PHA enters HAP contracts for the number of units or funding reserved under ACC for at least one year.
- Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the PHA, according to data from the PHA's last year-end operating statement that is recorded in HUD's accounting system.

Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances
Maximum Points: 10

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

Success Rate of Voucher Holders
Maximum Points: 5

- Only applies to PHAs that have received approval to establish success rate payment standard amounts and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

Deconcentration Bonus Indicator
Maximum Points: 5

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50-percentile rent, starting with the second full AHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART VI: RECORD KEEPING

16-VI.A. OVERVIEW

The AHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the AHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-VI.B. RECORD RETENTION

[24 CFR 982.158]
During the term of each assisted lease, and for at least three years thereafter, the AHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the AHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B;
- Accounts and other records supporting AHA budget and financial statements for the program;
- Records to document the basis for AHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

Notice PIH 2014-20 requires AHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

16-VI.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
All applicant and participant information will be kept in a secure location and access will be limited to authorized AHA staff.

AHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]
The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the AHA may release the information collected.

Upfront Income Verification (UIV) Records
PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g., electronic, paper). These requirements are contained in the HUD-issued document, Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data.

AHA Policy
Prior to utilizing HUD's EIV system, the AHA will adopt and implement EIV security procedures required by HUD.

Criminal Records
The AHA may only disclose the criminal conviction records which the AHA receives from a law enforcement agency to officers or employees of the AHA, or to authorized representatives of the AHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The AHA must establish and implement a system of records management that ensures that any criminal record received by the AHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the AHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The AHA must establish and implement a system of records management that ensures that any sex offender registration information received by the AHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the AHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information or is obtained by AHA other than under 24 CFR 5.905.

Medical/Disability Records
PHAs are not permitted to inquire about the nature or extent of a person's disability. The AHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the AHA receives a verification document that provides such information, the AHA should not place this information in the tenant file. The AHA should destroy the document.

Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
For requirements and AHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, see section 16-IX.E.

PART VII: REPORTING & RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

The AHA has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the AHA is subject to.

16-VII.B. REPORTING REQUIREMENT

[24 CFR 35.1225(e); Notice PIH 2017-13]
The owner must report the name and address of a child identified as having an elevated blood lead level to the public health department within five business days of being so notified by any other medical health care professional. The owner must also notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days. The PHA may collaborate with the owner on the notification process, such as by agreeing with the owner to provide the required notifications on the owner's behalf.

AHA Policy
Upon notification by the owner, the AHA will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five business days.

Upon notification by the owner, the AHA will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

16-VII.C. DATA COLLECTION & RECORD KEEPING

[24 CFR 35.1225(f)]
At least quarterly, the AHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If the AHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the AHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the AHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the AHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

AHA Policy
The public health department(s) has stated they do not wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the AHA is not providing such a report.

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

The HCV regulations allow AHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.354(e)(1) and 982.454]. If AHA denies a family a portability move based on insufficient funding, the AHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. Insufficient funding may also impact the AHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the AHA will use to determine whether or not the AHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16-VIII.B. METHODOLOGY

AHA Policy
The AHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the AHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, the AHA will add

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if the AHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the AHA will be considered to have insufficient funding.

PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

16-IX.A. OVERVIEW

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and AHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and AHA policies are located primarily in the following sections: 3-I.C, "Family Breakup and Remaining Member of Tenant Family"; 3-III.G, "Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking"; 10-I.A, "Allowable Moves"; 10-I.B, "Restrictions on Moves"; 12-II.E, "Terminations Related to Domestic Violence, Dating Violence, or Stalking"; and 12-II.F, "Termination Notice."

16-IX.B. DEFINITIONS

[24 CFR 5.2003, 42 USC 13925]
As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - The length of the relationship
    - The type of relationship
    - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent
- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

16-IX.C. NOTIFICATION

[24 CFR 5.2005(a)]
Notification to Public
The AHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

AHA Policy
The AHA will post the following information regarding VAWA in its offices and on its website. It will also make the information readily available to anyone who requests it.

A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (see sample notices in Exhibits 16 1 and 16-2).

The definitions of domestic violence, dating violence, sexual assault, and stalking provided in VAWA (included in Exhibits 16-1 and 16-2).

An explanation of the documentation that the AHA may require from an individual who claims the protections provided by VAWA (included in Exhibits 16-1 and 16-2).

A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking.

A statement of the AHA's obligation to keep confidential any information that it receives from a victim unless (a) the AHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibits 16-1 and 16-2).

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2).

Contact information for local victim advocacy groups or service providers

Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]
PHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

AHA Policy
The AHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. The AHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

The AHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. The AHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notice in Exhibit 16-1 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, Sexual Assault, and Stalking.

Notification to Owners and Managers [24 CFR 5.2005(a)(2)]
PHAs are required to notify owners and managers participating in the HCV program of their rights and obligations under VAWA.

AHA Policy
The AHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program and at least annually thereafter.

The VAWA information provided to owners will consist of the notice in Exhibit 16-2 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.

16-IX.D. DOCUMENTATION

[24 CFR 5.2007]
A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

be allowed at least 14 business days after receipt of the request to submit the documentation. The AHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the AHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

1) A completed and signed HUD-approved certification form (HUD-50066, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim
2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record
3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The AHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [VAWA final rule].

AHA Policy
Any request for documentation of domestic violence, dating violence, sexual assault or stalking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The AHA may, in its discretion, extend the deadline for 10 business days. Any extension granted by the AHA will be in writing.

Conflicting Documentation [24 CFR 5.2007(e)]
In cases where the AHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the AHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The AHA must honor any court orders issued to protect the victim or to address the distribution of property.

AHA Policy
If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, the AHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made.

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]
The AHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b).

AHA Policy
If the AHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault or stalking, the AHA will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation [24 CFR 5.2007(c)]
In order to deny relief for protection under VAWA, AHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the AHA may allow, the AHA may deny relief for protection under VAWA.

16-IX.E. CONFIDENTIALITY

[24 CFR 5.2007(b)(4)]
All information provided to the AHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that the AHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

AHA Policy
If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the AHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

EXHIBIT 16-1: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER APPLICANTS & PARTICIPANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project.

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, or stalking. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your rights under VAWA.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Protections for Victims
If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, sexual assault, or stalking.

If you are the victim of domestic violence, dating violence, sexual assault, or stalking, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a member of your household or a guest can't be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

Reasons You Can Be Evicted
You can be evicted, and your rental assistance can be terminated if the housing authority or your landlord can show there is an *actual* and *imminent* (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to participants who are not victims.

Removing the Abuser from the Household
Your landlord may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser's Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

Moving to Protect Your Safety
The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the housing choice voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

Proving That You Are a Victim of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
The housing authority and your landlord can ask you to prove or "certify" that you are a victim of domestic violence, dating violence, sexual assault, or stalking. The housing authority or your landlord must give you at least 14 business days (i.e., Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority and your landlord are free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority or your landlord. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the date, time, and location of the incident of violence, and a description of the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

violence. You are only required to provide the name of the abuser if it is safe to provide and you know their name.
- Provide a statement from a victim service provider, attorney, mental health professional, or medical professional who has helped you address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing "under penalty of perjury."
- Provide a police or court record, such as a protective order, or an administrative record.
- Additionally, at its discretion, the housing authority can accept a statement or other evidence provided by the applicant or participant.

If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.

Confidentiality
The housing authority and your landlord must keep confidential any information you provide about the violence against you, unless:
- You give written permission to the housing authority or your landlord to release the information.
- Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority or your landlord to release the information.

If release of the information would put your safety at risk, you should inform the housing authority and your landlord.

VAWA and Other Laws
VAWA does not limit the housing authorities or your landlord's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

For Additional Information
If you have any questions regarding VAWA, please contact your Section 8 Housing Specialist or Thea Guerin at tguerin@abqha.org or 505-764-3991.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

Definitions
For purposes of determining whether a participant may be covered by VAWA, the following list of definitions applies:

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *sexual assault* as "any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).

VAWA defines *stalking* as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

EXHIBIT 16-2: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS & MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project.

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, and stalking. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your obligations under VAWA.

Protections for Victims
You cannot refuse to rent to an applicant solely because he or she is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

You cannot evict a tenant who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Permissible Evictions
You can evict a victim of domestic violence, dating violence, sexual assault, or stalking if you can demonstrate that there is an actual and imminent (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking. You cannot hold a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than you hold tenants who are not victims.

Removing the Abuser from the Household
You may bifurcate (split) the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
If a tenant asserts VAWA's protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You are not required to demand official documentation and may rely upon the victim's statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- A completed, signed HUD-approved certification form. The most recent form is HUD 50066. This form is available at the housing authority or online at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud5
- A statement from a victim service provider, attorney, mental health professional, or medical professional who has helped the victim address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.
- A police or court record, such as a protective order, or administrative record.
- If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

Confidentiality
You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written permission releasing the information.
- The information is required for use in an eviction proceeding, such as to evict the abuser.
- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

VAWA and Other Laws
VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

Additional Information
- If you have any questions regarding VAWA, please contact your Section 8 Housing Specialist or Thea Guerin at tguerin@abqha.org or 505-764-3991.

Definitions
For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:
- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:
- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *sexual assault* as "any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).

VAWA defines *stalking* as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING & ALTERNATE DOCUMENTATION

FORM HUD-5382

CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, AND ALTERNATE DOCUMENTATION

U.S. Department of Housing and Urban Development

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act ("VAWA") protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

(1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.

(2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

(3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. Date the written request is received by victim: _____
2. Name of victim: _____
3. Your name (if different from victim's): _____
4. Name(s) of other family member(s) listed on the lease: _____

   _____
5. Residence of victim: _____
6. Name of the accused perpetrator (if known and can be safely disclosed): _____

   _____
7. Relationship of the accused perpetrator to the victim: _____
8. Date(s) and times(s) of incident(s) (if known): _____

   _____
9. Location of incident(s): _____

In your own words, briefly describe the incident(s): _____

_____

_____

_____

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

_____ _____

Signature Date

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 16-3: NMA EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

Attachment: Certification form HUD-5382
Albuquerque Housing Authority
Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence,
Sexual Assault, or Stalking
HCV Program

Emergency Transfers
The PHA is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),[26] the PHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.[27] The ability of the PHA to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether the PHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

[26] Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. [27] Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that oversees that the public housing and housing choice voucher (HCV) programs are in compliance with VAWA.

Eligibility for Emergency Transfers
A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer, if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

Emergency Transfer Request Documentation
To request an emergency transfer, the tenant shall notify the PHA's management office and submit a written request for a transfer to any AHA office. The PHA will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under the PHA's program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality
The PHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the PHA written permission to release the information on a time-limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person or persons that committed an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence against Women Act for All Tenants for more information about the PHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Emergency Transfer Timing and Availability
The PHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The PHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The PHA may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If the PHA has no safe and available units for which a tenant who needs an emergency transfer is eligible, the PHA will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, the PHA will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Emergency Transfers: Public Housing (PH) Program
If you are a public housing resident and request an emergency transfer as described in this plan, the PHA will attempt to assist you in moving to a safe unit quickly. The PHA will make exceptions as required to policies restricting moves.

Emergency transfers for which you are not required to apply for assistance include the following:
- Public housing unit in a different development
- Public housing unit in the same development, if you determine that the unit is safe

At your request, the PHA will refer you to organizations that may be able to further assist you.

You may also request an emergency transfer to the following programs for which you are required to apply for assistance:
- HCV tenant-based program
- HCV project-based assistance
- Other programs administered by the PHA (such as state housing programs)

Emergency transfers will not take priority over waiting list admissions for these types of assistance. At your request, the PHA will refer you to organizations that may be able to further assist you.

Safety and Security of Tenants
Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Tenants who have been victims of sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at https://ohl.rainn.org/online

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at https://www.victimsofcrime.org/our-programs/stalking-resource-center

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

FORM HUD-5383

EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

U.S. Department of Housing and Urban Development

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) **You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

(2) **You expressly request the emergency transfer.** Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) **You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____
2. Your name (if different from victim's) _____
3. Name(s) of other family member(s) listed on the lease: _____
4. Name(s) of other family member(s) who would transfer with the victim: _____

   _____
5. Address of location from which the victim seeks to transfer: _____

   _____
6. Address or phone number for contacting the victim: _____
7. Name of the accused perpetrator (if known and can be safely disclosed): _____

   _____
8. Relationship of the accused perpetrator to the victim: _____
9. Date(s), Time(s) and location(s) of incident(s): _____
10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____
11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit. _____

    _____
12. If voluntarily provided, list any third-party documentation you are providing along with this notice: _____

    _____

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

_____ _____

Signature Date

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 17 – PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and AHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the AHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the AHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the AHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW

[24 CFR 983.5; FR Notice 1/18/17; Notice PIH 2017-21]
The project-based voucher (PBV) program allows AHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

AHA Policy
The AHA will operate a project-based voucher program using up to 20 percent of its budget authority for project-based assistance.

See Exhibit 17-1 for information on projects to which the PHA has attached PBV assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the AHA is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, the AHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the PHA has vouchers available for project-basing [FR Notice 1/18/17].].

Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21]
The PHA may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap. Units qualify under this exception if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- Are specifically made available to house families that are comprised of or include a veteran.
    - *Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.
- Only units that that are under a HAP contract that was first executed on or after April 18, 2017, are covered by the 10 percent exception.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
AHA may project-base up to an additional 10 percent of its authorized units, up to 30 percent, in accordance with HUD regulations and requirements.

Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]
PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017.

AHA Policy
AHA may project-base any units not subject to the 20 percent cap in accordance with HUD regulations and requirements.

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE

[24 CFR 983.2]
Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the AHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

AHA Policy
Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the AHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants. There are two exceptions: 1) Reexaminations for PBV properties will be done based on the anniversary date of the HAP Contract; and 2) Utility allowance changes will take effect at reexamination which will be based on the anniversary date of the HAP Contract.

17-I.C. RELOCATION REQUIREMENTS

[24 CFR 983.7]
Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the PHA to ensure the owner complies with these requirements.

17-I.D. EQUAL OPPORTUNITY REQUIREMENTS

[24 CFR 983.8]
The AHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the AHA must comply with the AHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

PART II: PBV OWNER PROPOSALS

17-II.A. OVERVIEW

The AHA must describe the procedures for owner submission of PBV proposals and for AHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the AHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. The AHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES

[24 CFR 983.51(b)]
The AHA must select PBV proposals in accordance with the selection procedures in the AHA administrative plan. The AHA must select PBV proposals by either of the following two methods.

- AHA request for PBV Proposals. The AHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the AHA request. The AHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- AHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

competitive selection proposal did not involve any consideration that the project would receive PBV assistance. The AHA need not conduct another competition.

Units Selected Non-Competitively
[FR Notice 1/18/17; Notice PIH 2017-21;24 CFR 983.51(b)]
For certain public housing projects where the PHA has an ownership interest or control , the PHA may attach PBV assistance non-competitively without following one of the two processes above.

This exception applies when the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which the PHA entered into the AHAP or HAP.

If the PHA is planning rehabilitation or new construction on the project, a minimum threshold of $25,000 per unit in hard costs must be expended.

If the PHA plans to replace public housing by attaching PBV assistance to existing housing in which the PHA has an ownership interest or control, then the $25,000 per unit minimum threshold does not apply as long as the existing housing substantially complies with HQS.

The PHA must include in the administrative plan what work it plans to do on the property or site and how many PBV units will be added to the site.

AHA Policy
The AHA intends to project base units non-competitively as described above.

- Under this provision, the AHA may submit a proposal for project-based housing that is owned or controlled by the AHA as described above. If the proposal is for AHA-owned housing, the AHA will use an independent entity approved by HUD as required under the regulations. The AHA will obtain HUD approval of the independent entity prior to selecting the proposal for AHA-owned housing.
- The AHA will detail the work it plans to do on the public housing property or site as well as how many units it plans to project-base at the property or site through the annual and/or five-year plan process.
- The AHA will ensure that any PHA-owned existing housing substantially complies with HQS. The AHA defines substantially complies with HQS as units with no life-threatening violations that will pass HQS the earlier of three months of PBV HAP contract execution or at the end of the construction period.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]
AHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the AHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the AHA request for PBV proposals must specify the submission

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

deadline. Detailed application and selection information must be provided at the request of interested parties.

AHA Policy

AHA Request for Proposals for Rehabilitated and Newly Constructed Units

The AHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals.

The Albuquerque Journal

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition, the AHA will post the RFP and proposal submission and rating and ranking procedures on its web site.

The AHA will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the AHA estimates that it will be able to assist under the funding the AHA is making available. Proposals will be due in the AHA office by close of business 30 calendar days from the date of the last publication.

In order for the proposal to be considered, the owner must submit the proposal to the AHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

The AHA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

- Owner experience and capability to build or rehabilitate housing as identified in the RFP;
- Extent to which the project furthers the AHA goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- In order to promote partially assisted projects, projects where less than 25 percent of the units assisted will be rated higher than projects where 25 percent or more of the units will be assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the AHA will rate partially assisted projects on the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

percentage of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

AHA Requests for Proposals for Existing Housing Units

The AHA will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

The Albuquerque Journal

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition, the AHA will post the notice inviting such proposal submission and the rating and ranking procedures on its web site.

The AHA will periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the AHA estimates that it will be able to assist under the funding the AHA is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

- Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
- Extent to which the project furthers the AHA goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Extent to which units are occupied by families that are eligible to participate in the PBV program.

AHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

The AHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis.

The AHA may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

The Albuquerque Journal

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

In addition to, or in place of advertising, the AHA may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. The AHA will evaluate each proposal on its merits using the following factors:

- Extent to which the project furthers the AHA goal of deconcentrating poverty and expanding housing and economic opportunities; and
- Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

AHA-Owned Units [24 CFR 983.51(e), 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]
An AHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the AHA-owned units were appropriately selected based on the selection procedures specified in the AHA administrative plan. This also applies to non-competitive selections. If the AHA selects a proposal for housing that is owned or controlled by the AHA, the AHA must identify the entity that will review the AHA proposal selection process and perform specific functions with respect to rent determinations, the term of the HAP contract, and inspections.

In the case of AHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the AHA and a HUD-approved independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

AHA Policy
The AHA may submit a proposal for project-based housing that is owned or controlled by the AHA. If the proposal for AHA-owned housing is selected, the AHA will use the Santa Fe Civic Housing Authority, the Bernalillo County Housing Department, or other qualified entity to review the AHA selection process. The AHA will obtain HUD approval of Santa Fe Civic Housing Authority, the Bernalillo County Housing Department, or other qualified entity prior to selecting the proposal for AHA-owned housing.

The AHA may only compensate the independent entity from AHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The AHA may not use

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

other program receipts to compensate the independent entity for its services. The AHA and independent entity may not charge the family any fee for the appraisal, or the services provided by the independent entity.

AHA Notice of Owner Selection [24 CFR 983.51(d)]
The AHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

AHA Policy
Within 10 business days of the AHA making the selection, the AHA will notify the selected owner in writing of the owner's selection for the PBV program. The AHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, the AHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals the AHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The AHA will also post the notice of owner selection on its electronic web site.

The AHA will make available to any interested party its rating and ranking sheets and documents that identify the AHA basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The AHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The AHA will make these documents available for review at the AHA during normal business hours. The cost for reproduction of allowable documents will be $.50 per page.

17-II.C. HOUSING TYPE

[24 CFR 983.52]
The AHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of AHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The AHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The AHA choice of housing type must be reflected in its solicitation for proposals.

17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]
The AHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the AHA may not attach or pay PBV assistance for a unit occupied by an owner and the AHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

Subsidized Housing [24 CFR 983.54]
AHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that AHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the AHA in accordance with HUD requirements.

17-II.E. SUBSIDY LAYERING REQUIREMENTS

[24 CFR 983.55, Notice PIH 2013-11, and FR Notice 2/28/20]
The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

HUD requires new construction and rehabilitation housing that will include forms of governmental assistance other than PBVs to undergo a subsidy layering review (SLR) prior to entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP).

Subsidy layering requirements do not apply to existing housing, when PBV is the only governmental assistance or for projects already subject to a PBV HAP contract, even if the project is recapitalized with outside sources of funding.

When a PHA selects a new construction or rehabilitation project, the PHA must require information regarding all HUD and/or other federal, state, or local governmental assistance to be disclosed by the project owner using Form HUD-2880. Appendix A of FR Notice 2/28/20 contains a list of all required documentation.

Either HUD or a HUD-approved housing credit agency (HCA) in the PHA's jurisdiction performs the subsidy layering review. The PHA must request an SLR through their local HUD Field Office or, if eligible, through a participating HCA.

If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the PHA. The PHA may proceed to execute an AHAP at that time if the environmental approval is received.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

25 Percent per Project Cap [24 CFR 983.56, FR Notice 1/18/17, and Notice PIH 2017-21]
In general, the AHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]
As of April 18, 2017, units are not counted against the 25 percent or 25-unit per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
    - If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA (HAP contracts executed prior to April 18, 2017) may continue to use the former exceptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

Supportive Services

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. As of April 18, 2017, the project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

AHA Policy

Excepted units will be limited to units for elderly families.

Additionally, AHA may consider project-basing more than 25 percent of the number of dwelling units (assisted or unassisted) in the project, if the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates; the project cap is the greater of 25 units or 40 percent of the number of dwelling units in the project.

Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance.

AHA Policy

AHA does not have any PBV units that are subject to the per project cap exception.

Promoting Partially Assisted Projects [24 CFR 983.56(c)]

A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

A PHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 units or 25 percent of the units.

AHA Policy
Excepted units will be limited to units for elderly families.

Beyond that, AHA will not impose any further cap on the number of PBV units assisted per project, but will evaluate the amount of units to award to any project on a case-by-case basis.

17-II.G. SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]
The AHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the AHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the AHA Plan under 24 CFR 903 and the AHA administrative plan.

In addition, prior to selecting a proposal, the AHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

AHA Policy
It is the AHA goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the AHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 30 percent or less.

However, the AHA will grant exceptions to the 30 percent standard where the AHA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 30 percent, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood, or Renewal Community;
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
- A census tract where there has been an overall decline in the poverty rate within the past five years; or
- A census tract where there are meaningful opportunities for educational and economic advancement.

Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]
The AHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]
In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the AHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

17-II.H. ENVIRONMENTAL REVIEW

[24 CFR 983.58]
The AHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The responsible entity is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The AHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The AHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the AHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The AHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The AHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

PART III: DWELLING UNITS

17-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

17-III.B. HOUSING QUALITY STANDARDS

[24 CFR 983.101]
The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

Lead-based Paint [24 CFR 983.101(c)]
The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, and 40 CFR 745.227, apply to the PBV program.

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The AHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

17-III.D. INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)]
The AHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the AHA must inspect all the units before the proposal selection date and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the AHA may not execute the HAP contract until the units fully comply with HQS.

Pre-HAP Contract Inspections [24 CFR 983.103(b), FR Notice 1/18/17, and Notice PIH 2017-20]
The AHA must inspect each contract unit before execution of the HAP contract. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions, or if the unit passed an alternative inspection.

AHA Policy
The AHA will not provide assistance on behalf of the family until the unit fully complies with HQS.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Turnover Inspections [24 CFR 983.103(c-]
Before providing assistance to a new family in a contract unit, the AHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS.

Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]
At least once every 24 months during the term of the HAP contract, the AHA must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement.

> **AHA Policy**
> AHA will inspect once every 24 months a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the AHA must reinspect 100 percent of the contract units in the building.

Other Inspections [24 CFR 983.103(e)]
The AHA must inspect contract units whenever needed to determine that the contract units comply with HQS, and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The AHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The AHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting AHA supervisory quality control HQS inspections, the AHA should include a representative sample of both tenant-based and project-based units.

Inspecting AHA-Owned Units [24 CFR 983.103(f)]
In the case of AHA-owned units, the inspections must be performed by an independent entity designated by the AHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the AHA and to the HUD field office where the project is located. The AHA must take all necessary actions in response to inspection reports from the independent entity, including exercise of contractual remedies for violation of the HAP contract by the AHA-owner.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART IV: REHABILITATED & NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW

[24 CFR 983.151]
There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, the AHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The AHA may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the AHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the AHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

Content of the Agreement [24 CFR 983.152(d)]
At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the AHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Execution of the Agreement [24 CFR 983.153]
The Agreement must be executed promptly after AHA notice of proposal selection to the selected owner. The AHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the AHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the AHA may not enter into the Agreement until the environmental review is completed and the AHA has received environmental approval. However, the AHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

AHA Policy
The AHA will strive to enter into the Agreement with the owner within 20 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

17-IV.C. CONDUCT OF DEVELOPMENT WORK

Labor Standards [24 CFR 983.154(b)]
If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The AHA must monitor compliance with labor standards.

Equal Opportunity [24 CFR 983.154(c)]
The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

17-IV.D. COMPLETION OF HOUSING

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

Evidence of Completion [24 CFR 983.155(b)]
At a minimum, the owner must submit the following evidence of completion to the AHA in the form and manner required by the AHA:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the AHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

> **AHA Policy**
> The AHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The AHA will specify any additional documentation requirements in the Agreement to enter into HAP contract.

AHA Acceptance of Completed Units [24 CFR 983.156]
Upon notice from the owner that the housing is completed, the AHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. The AHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the AHA must not enter into the HAP contract.

If the AHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the AHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17-V.A. OVERVIEW

The AHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203]
The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and
- The initial rent to owner for the first 12 months of the HAP contract term.

Execution of the HAP Contract [24 CFR 983.204]
The AHA may not enter into a HAP contract until each contract unit has been inspected and the AHA has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after the AHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the AHA has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

> **AHA Policy**
> For existing housing, the HAP contract will be executed within 20 business days of the AHA determining that all units pass HQS.
>
> For rehabilitated or newly constructed housing, the HAP contract will be executed within 20 business days of the AHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

Term of HAP Contract [24 CFR 983.205, FR Notice 1/18/17, and Notice PIH 2017-21]
The AHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of AHA-owned units, the term of the HAP contract must be agreed upon by the AHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the AHA may extend the term of the contract for an additional term of up to 20 years if the AHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. AHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the AHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of AHA-owned units, any extension of the term of the HAP contract must be agreed upon by the AHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

AHA Policy
When determining whether or not to extend an expiring PBV contract, the AHA will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and lease(s);
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

Termination by AHA [24 CFR 983.205(c) and FR Notice 1/18/17]
The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that PHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA may terminate

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

Termination by Owner [24 CFR 983.205(d)]
If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206, FR Notice 1/18/17, and Notice PIH 2017-21]
Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

Remedies for HQS Violations [24 CFR 983.208(b)]
The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the PHA determines that a contract does not comply with HQS, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
The AHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

17-V.C. AMENDMENTS TO THE HAP CONTRACT

Substitution of Contract Units [24 CFR 983.207(a)]
At the PHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, the PHA must inspect the proposed unit and determine the reasonable rent for the unit.

Addition of Contract Units [FR Notice 1/18/17 and Notice PIH 2017-21]
The PHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

AHA Policy
AHA will consider adding units to the contract on a case-by-case basis to ensure the availability of affordable housing as long as the addition of units does not exceed allowable project caps.

17-V.D. HAP CONTRACT YEAR, ANNIVERSARY & EXPIRATION DATES

[24 CFR 983.207(b) and 983.302(e)]
The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates), or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT

[24 CFR 983.210]
When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the AHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]
The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the AHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The AHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
The AHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The AHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

Vacancy Payments [24 CFR 983.352(b)]
At the discretion of the AHA, the HAP contract may provide for vacancy payments to the owner for AHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the AHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

AHA Policy
The AHA will decide on a case-by-case basis if the AHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE

[24 CFR 983.251(a) and (b)]
The AHA may select families for the PBV program from those who are participants in the AHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the AHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the AHA's collection and use of

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

family information regarding income, expenses, and family composition [24 CFR 5.230]. The AHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

AHA Policy
The AHA will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

In-Place Families [24 CFR 983.251(b)]
An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the AHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the AHA's waiting list. Once the family's continued eligibility is determined (the AHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the AHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

17-VI.C. ORGANIZATION OF THE WAITING LIST

[24 CFR 983.251(c)]
The AHA may establish a separate waiting list for PBV units, or it may use the same waiting list for both tenant-based and project-based assistance. The AHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the AHA. If the AHA chooses to offer a separate waiting list for PBV assistance, the AHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If AHA decides to establish a separate PBV waiting list, the AHA may use a single waiting list for the AHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

AHA Policy
The AHA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. The AHA will accept applications as needed throughout the year. Applicants will be placed on the waiting list according to any project-based preference (s) for which they qualify, and the date and time their complete application is received by the AHA. The AHA may establish selection criteria or preferences for occupancy of particular PBV units.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The AHA currently has waiting lists for the following PBV projects:

- Kentucky Manor, 437 Kentucky St SE
- Luna Lodge, 9119 Central Av NE
- NLH4, 6600 Delia Rd SW
- Sundowner, 6101 Central Av NE
- Generations at West Mesa, 5710 Avalon Rd NW
- Nuevo Atrisco, 8081 Central Ave NW
- The Commons at Martineztown, 415 Fruit Ave NE, 615 Arno NE, 320 Roma NE
- Luminaria Senior Community, 10600 Central Ave SE

The AHA anticipates adding waiting lists for the following PBV projects:

- Hiland Plaza, 5000 Central Ave SE
- 1840-1880 Broadway Place NE
- 6100 Harper NE
- Felician Villa, 4210 Meadowlark Lane SE, Rio Rancho

17-VI.D. SELECTION FROM THE WAITING LIST

[24 CFR 983.251(c)]
Applicants who will occupy units with PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list.

Income Targeting [24 CFR 983.251(c)(6)]
At least 75 percent of the families admitted to the AHA's tenant-based and project-based voucher programs during the AHA fiscal year from the waiting list must be extremely low - income families. The income targeting requirement applies to the total of admissions to both programs.

Units with Accessibility Features [24 CFR 983.251(c)(7)]
When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the AHA must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d), FR Notice 11/24/08]
The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The PHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

The PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the PHA plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with "excepted units" for elderly families or supportive services, the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

AHA Policy
The AHA will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for "excepted units," mobility impaired persons for accessible units). The AHA will offer preferences for particular developments as described in the project application and in the on-line application.

17-VI.E. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]
The AHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant in the lottery for tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place in the lottery based on preference, date, and time of application, or other factors affecting selection under the AHA's selection policy;
- Remove the applicant from the tenant-based voucher lottery.

Disapproval by Landlord [24 CFR 983.251(e)(2)]
If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher lottery.

Acceptance of Offer [24 CFR 983.252]

Family Briefing
When a family accepts an offer for PBV assistance, the AHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the AHA must provide a briefing packet that explains how the AHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities
If an applicant family's head or spouse is disabled, the AHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the AHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Persons with Limited English Proficiency
The AHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

17-VI.F. OWNER SELECTION OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

Leasing [24 CFR 983.253(a)]
During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the AHA from the AHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the AHA's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]
The owner must promptly notify the AHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the AHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The AHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

> **AHA Policy**
> The owner must notify the AHA in writing (mail, fax, or e-mail) within five business days of learning about any vacancy or expected vacancy.
>
> The AHA will make every reasonable effort to refer families to the owner within 30 days of receiving such notice from the owner.

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]
If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the AHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

> **AHA Policy**
> If any contract units have been vacant for 120 days, the AHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The AHA will provide the notice to the owner within 10 business days of the 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st day of the month following the date of the AHA's notice.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

17-VI.G. TENANT SCREENING

[24 CFR 983.255]

AHA Responsibility

The AHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the AHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

> **AHA Policy**
> The AHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The AHA must provide the owner with an applicant family's current and prior address (as shown in AHA records) and the name and address (if known by the AHA) of the family's current landlord and any prior landlords.

In addition, the AHA may offer the owner other information the AHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The AHA must provide applicant families a description of the AHA policy on providing information to owners, and the AHA must give the same types of information to all owners.

The AHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

> **AHA Policy**
> The AHA will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. The AHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PART VII: OCCUPANCY

17-VII.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the AHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

17-VII.B. LEASE

[24 CFR 983.256]
The tenant must have legal capacity to enter a lease under state and local law. Legal capacity means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

Form of Lease [24 CFR 983.256(b)]
The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as AHA model lease.

The AHA may review the owner's lease form to determine if the lease complies with state and local law. If the AHA determines that the lease does not comply with state or local law, the AHA may decline to approve the tenancy.

AHA Policy
The AHA will not review the owner's lease for compliance with state or local law.

Lease Requirements [24 CFR 983.256(c)]
The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Tenancy Addendum [24 CFR 983.256(d)]
The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the AHA (the names of family members and any AHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f)]
The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g., month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The AHA terminates the HAP contract
- The AHA terminates assistance for the family

Changes in the Lease [24 CFR 983.256(e)]
If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the AHA a copy of all changes.

The owner must notify the AHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the AHA and in accordance with the terms of the lease relating to its amendment. The AHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]
With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for "good cause" does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08]
If a family is living in a project-based unit that is excepted from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]
The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by AHA policy. According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days. AHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 982.258]
Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the AHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

> **AHA Policy**
> If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the AHA of the change and request an interim reexamination before the expiration of the 180-day period.

Security Deposits [24 CFR 983.259]
The owner may collect a security deposit from the tenant. The AHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

> **AHA Policy**
> The AHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The AHA has no liability or responsibility for payment of any amount owed by the family to the owner.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]
If the AHA determines that a family is occupying a wrong size unit, based on the AHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the AHA must promptly notify the family and the owner of this determination, and the AHA must offer the family the opportunity to receive continued housing assistance in another unit.

AHA Policy
The AHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the AHA's determination. The AHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project;
- PBV assistance in another project; and
- Tenant-based voucher assistance.

If the AHA offers the family a tenant-based voucher, the AHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the AHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the AHA must remove the unit from the HAP contract.

If the AHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the AHA, or both, the AHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the AHA and remove the unit from the HAP contract.

AHA Policy
When the AHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the AHA will terminate the housing assistance payments at the expiration of this 30-day period.

The AHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.261]
The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the AHA. If the family wishes to move with continued tenant-based assistance, the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

family must contact the AHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the AHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the AHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

Emergency Transfers under VAWA [Notice PIH 2017-08]
Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

AHA Policy
When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, the AHA will provide several options for continued assistance.

The AHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the AHA has PBV units. The AHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible. If assistance is transferred to another development, the AHA will give priority to the participant on the other development's waiting list.

If no units are available for an internal transfer, to a PBV development or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the AHA's public housing program. Such a decision will be made by the AHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The AHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking in its public housing programs in order to expedite this process.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the AHA will offer the participant an internal transfer to another

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PBV unit in the same development or a transfer to a different development where the AHA has PBV units. The AHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to the AHA's public housing program. The AHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking as part of the public housing ACOP in order to expedite this process.

17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP

[24 CFR 983.262]
As of April 17, 2018, AHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project

If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the AHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the AHA, and the AHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit no longer meets the criteria for a "qualifying family" because the family is no longer an elderly family due to a change in family composition, the PHA has the discretion to allow the family to remain in the excepted unit. If the PHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of this changed circumstance. A PHA or owner cannot determine that a participant's needs exceed the level of care offered by

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

qualifying services or require that individuals be transitioned to different projects based on service needs.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the AHA.

The AHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long-term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

AHA Policy
The AHA will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members' control.

In all other cases, the AHA will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the AHA will terminate the housing assistance payments at the expiration of this 30-day period.

The AHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

17-VIII.B. RENT LIMITS

[24 CFR 983.301]
Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the AHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

Certain Tax Credit Units [24 CFR 983.301(c)]

- For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:
- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

Definitions
A qualified census tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Tax credit rent is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]
The AHA must determine reasonable rent in accordable with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the AHA

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordable with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If the AHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

AHA Policy
The AHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, the AHA will use the higher initial rent to owner amount.

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]
When determining the initial rent to owner, the AHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the AHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the AHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, the AHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

AHA Policy
Upon written request by the owner, the AHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The AHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the AHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

the HAP, or redetermination of rent, if the AHA determines it is necessary due to AHA budgetary constraints.

Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]
While small area FMRs (SAFMRs) do not apply to PBV projects, PHAs that operate a tenant-based program under SAFMRs may apply SAFMRs to all future PBV HAP contracts. If the PHA adopts this policy, it must apply to all future PBV projects and the PHA's entire jurisdiction. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy.

Further, the PHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective dates of PHA implementation, provided the owner is willing to mutually agree to doing so and the application is prospective. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

AHA Policy
The AHA will not apply SAFMRs to the AHA's PBV program.

Redetermination of Rent [24 CFR 983.302]
The AHA must redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

Rent Increase
If an owner wishes to request an increase in the rent to owner from the AHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the AHA. The AHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

AHA Policy
An owner's request for a rent increase must be submitted to the AHA 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

The AHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Rent Decrease
If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the AHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

Notice of Rent Change
The rent to owner is redetermined by written notice by the AHA to the owner specifying the amount of the redetermined rent. The AHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

> **AHA Policy**
> The AHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

AHA-Owned Units [24 CFR 983.301(g)]
For AHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The AHA must use the rent to owner established by the independent entity.

17-VIII.C. REASONABLE RENT

[24 CFR 983.303]
At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the AHA, except where the AHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

When Rent Reasonable Determinations Are Required
The AHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- The AHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

How to Determine Reasonable Rent
The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the AHA must consider factors that affect market rent. Such factors include the location, quality, size, type and

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Comparability Analysis
For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the AHA. The comparability analysis may be performed by AHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

AHA-Owned Units
For AHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for AHA-owned units to the AHA and to the HUD field office where the project is located.

Owner Certification of Reasonable Rent
By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the AHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17-VIII.D. EFFECT OF OTHER SUBSIDY & RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

Other Subsidy [24 CFR 983.304]
To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, AHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

Combining Subsidy
Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

Rent Control [24 CFR 983.305]
In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS

[24 CFR 983.351]
During the term of the HAP contract, the AHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the AHA agree on a later date.

Except for discretionary vacancy payments, the AHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the AHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

17-IX.B. VACANCY PAYMENTS

[24 CFR 983.352]
If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the AHA determines that the vacancy is the owner's fault.

> **AHA Policy**
> If the AHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, the AHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The AHA will

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the AHA, the HAP contract may provide for vacancy payments to the owner. The AHA may only make vacancy payments if:

- The owner gives the AHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner, and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the AHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the AHA and must provide any information or substantiation required by the AHA to determine the amount of any vacancy payment.

AHA Policy
If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the AHA of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the AHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the AHA within 10 business days of the AHA's request, no vacancy payments will be made.

17-IX.C. TENANT RENT TO OWNER

[24 CFR 983.353]
The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the AHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the AHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the AHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the AHA. The owner must immediately return any excess payment to the tenant.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Tenant and AHA Responsibilities
The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the AHA.

Likewise, the AHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The AHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The AHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements
If the amount of the utility allowance exceeds the total tenant payment, the AHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The AHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the AHA chooses to pay the utility supplier directly, the AHA must notify the family of the amount paid to the utility supplier.

> **AHA Policy**
> The AHA will make utility reimbursements to the family.

17-IX.D. OTHER FEES & CHARGES

[24 CFR 983.354]
Meals and Supportive Services
With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner
The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION

The AHA has HAP Contracts with the following projects for PBV rental assistance.

Project Name	Address	Owner	# PBV units
Kentucky Manor	**437 Kentucky St SE**	**New Life Homes**	**9**
Luna Lodge	**9119 Central Av NE**	**New Life Homes**	**7**
NLH4	**6600 Delia Rd SW**	**New Life Homes**	**15**
Sundowner	**6101 Central Av NE**	**New Life Homes**	**18**
Generations at West Mesa	**5715 Avalon Rd NW**	**Gorman & Co., Catholic Charities**	**11**
Nuevo Atrisco	**8081 Central Av NW**	**YES Housing**	**20**
The Commons at Martineztown	**320 Roma Avenue, NE**	**The Commons at Martineztown, LLLP (AHA)**	**24**

The AHA has an Agreement to Enter into a HAP Contract with the following projects for PBV rental assistance.

Project Name	Address	Owner	# PBV units
Luminaria Senior Community	**10600 Central Ave SE**	**Greater Albuquerque Housing Partnership**	**23**
Broadway/McKnight	**1840-1878 Broadway Pl NE**	**Albuquerque Housing Authority**	**13**

The AHA has selected the following projects for PBV rental assistance.

Project Name	Address	Owner	# PBV units
Hiland Plaza	**5000 Central Ave SE**	**Greater Albuquerque Housing Partnership**	**23**
Felician Villa	**4210 Meadowlark Lane SE, Rio Rancho**	**CC Housing, Inc.**	**16**

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 17-2: SPECIAL PROVISIONS APPLYING TO TPVS AWARDED AS PART OF A VOLUNTARY CONVERSION OF PUBLIC HOUSING UNITS IN PROJECTS THAT INCLUDE RAD PBV UNITS

[24 CFR Part 972.200; Notice PIH 2019-05; Notice PIH 2019-23]

Under certain circumstances, HUD allows small PHAs to reposition a public housing project (or portion of a project) by voluntarily converting units to tenant-based housing choice voucher assistance. In order to preserve affordable housing for residents of the project, the PHA is given priority to receive replacement tenant protection vouchers (TPVs). As part of the voluntary conversion, the PHA has the option to continue to operate it as rental housing. If so, the PHA or subsequent owner must allow existing families to remain in their units using the TPV in the form of tenant-based assistance. In this situation, however, the PHA may choose to project-base these TPVs in the former public housing project. Families must still be provided with the option to remain in their unit using tenant-based assistance. In order for the PHA to project-base the assistance and include these units on the PBV HAP contract, the family must voluntarily consent in writing to PBV assistance following the requirements in Appendix A of Notice PIH 2019-05. If the family fails to consent to PBV assistance and chooses to remain using tenant-based assistance, the family's unit is excluded from the PBV HAP contract until the family moves out or consents to switching to PBV assistance. In general, all applicable program regulations and guidance for the standard PBV program apply to these units.

The PHA may also convert units in the same former public housing project to the PBV program under the rental assistance demonstration (RAD) program. The RAD statute authorizes HUD to waive certain statutory and regulatory provisions governing the standard PBV program and specify alternative requirements. In order to facilitate the uniform treatment of residents and units at the project, Notice PIH 2019-23 extended some of the alternative requirements to non-RAD PBV units in the converted project (i.e., the TPV units in the project). As such, while PBV TPV units in the converted project generally follow the requirements for the standard PBV program listed in this chapter, where HUD has specified alternative requirements for non-RAD PBV units in the project, PBV TPV units will instead follow the requirements outlined in Chapter 18 of this policy for the RAD PBV program.

RAD Requirements Applicable to Non-RAD units in the Project

Alternative Requirement under RAD as Listed in Notice PIH 2019-23	Standard PBV Policy That Does Not Apply	Applicable Policy in Chapter 18
1.6.A.4. Site Selection – Compliance with PBV Goals	17-II.G. SITE SELECTION STANDARDS applies with the exception of deconcentration of poverty and expanding housing and economic opportunity requirements.	18-II.F. SITE SELECTION STANDARDS
1.6.B.5.d. PBV Site-Specific Utility Allowances	Alternative requirement under RAD. No	18-VII.C. UTILITY ALLOWANCES

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

	corresponding policy in Chapter 17.	
1.6.C.1. No Rescreening of Tenants upon Conversion	Policies contained in Chapter 3 relating to eligibility do not apply to existing tenants who receive TPVs.	18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION
1.6.C.2. Right to Return	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-I.D. RELOCATION REQUIREMENTS
1.6.C.3. Phase-in of Tenant Rent Increases	Alternative requirements under RAD. No corresponding policy in Chapter 17.	18-VIII.D. PHASE-IN OF TENANT RENT INCREASES
1.6.C.4. Family Self Sufficiency (FSS) and Resident Opportunities and Self-Sufficiency Service Coordinator (ROSS-SC) Programs	Not covered in administrative plan.	18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS
1.6.C.5. Resident Participation and Funding	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VI.D. RESIDENT PARTICIPATION AND FUNDING
1.6.C.6. Resident Procedural Rights	Policies related to hearings in Chapter 16 apply, with added procedural rights and notice requirements as outlined in Chapter 18.	18-VI.H. RESIDENTS' PROCEDURAL RIGHTS
1.6.C.7. Earned Income Disregard (EID)	Alternative requirements under RAD for in-place residents. New admissions follow policies in Chapter 6.	18-VI.G. EARNED INCOME DISALLOWANCE
1.6.C.8. Jobs Plus	Not covered in administrative plan.	No corresponding policy.
1.6.C.9. When Total Tenant Payment Exceeds Gross Rent	Alternative requirements under RAD for in-place residents. New admissions follow policies in 17-VII.B. LEASE, Continuation of Housing Assistance Payments.	18-VI.B. LEASE, Continuation of Housing Assistance Payments

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

1.6.C.10. Under-Occupied Unit	Alternative requirements under RAD for in-place residents. New admissions follow 17-VII.C. MOVES, Overcrowded, Under-Occupied, and Accessible Units	18-VI.E. MOVES, Overcrowded, Under-Occupied, and Accessible Units
1.6.D.4. Establishment of Waiting List	Alternative requirements under RAD for initial establishment of the waiting list. Once waiting list is established, follow 17-VI.D. SELECTION FROM THE WAITING LIST	18-V.D. ORGANIZATION OF THE WAITING LIST
1.6.D.10. Initial Certifications and Tenant Rent Calculations	Alternative requirements under RAD for in-place residents. No corresponding policy in Chapter 17.	18-VIII.C. TENANT RENT TO OWNER, Initial Certifications

Note, while Notice PIH 2019-05 states that the PHA must screen families for eligibility for a tenant protection voucher and that families must be below the low-income limit (80 percent of AMI), Notice PIH 2019-23 waives these requirements for residents in projects that include RAD PBV units.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 18 – PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

INTRODUCTION

This chapter describes HUD regulations and AHA policies related to the Project-Based Voucher (PBV) program under the Rental Assistance Demonstration (RAD) program in eight parts:

Part I: General Requirements. This part describes general provisions of the PBV program, including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Project Selection. This part describes the cap on assistance at projects receiving PBV assistance, ownership and control, and site selection standards.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution and term of the HAP contract.

Part V: Selection of PBV Program Participants. This part describes the requirements and policies governing how AHA and the owner will select a family to receive PBV assistance.

Part VI: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move.

Part VII: Determining Contract Rent. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract.

Part VIII: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

18-I.A. OVERVIEW AND HISTORY OF THE RAD PROGRAM

The Rental Assistance Demonstration (RAD) program was authorized in 2012 in order to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's four primary objectives are to:

- Preserve and improve public and other assisted housing.
- Standardize the administration of the plethora of federally subsidized housing programs and rules. The conversions are intended to promote operating efficiency by using a Section 8 project-based assistance model that has proven successful and effective for over

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs.
- Attract private market capital for property renovations. Through the use of this model, properties may be able to leverage private debt and equity to make capital repairs.
- Increase tenant mobility opportunities.

Under the first component, AHA with public housing units may submit an application to HUD to convert some or all of their public housing units to long-term, project-based Section 8 HAP contracts under either:
- Project-based rental assistance (PBRA) under HUD's Office of Multifamily Housing Programs.
- Project-based vouchers (PBVs) under HUD's Office of Public and Indian Housing (PIH).

This chapter will focus on public housing conversions to the PBV program under RAD. In order to distinguish between requirements for public housing conversion under RAD and PBV units under the standard PBV program, we will refer to the standard PBV program and the RAD PBV program.

18-I.B. APPLICABLE REGULATIONS

On the whole, the regulations for both the standard and RAD PBV programs generally follow the regulations for the tenant-based HCV program found at 24 CFR Part 982. However, important parts of the tenant-based regulations do not apply to the project-based program. 24 CFR Part 983 outlines the sections of 24 CFR Part 982 that are not applicable to the project-based program.

For the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions or establish alternative requirements from the standard PBV program. These provisions are identified in Notice 2019-23 (issued September 5,2019)). Any non-RAD PBV units located in the covered project are subject to the same waivers and alternative requirements where noted in Notice PIH 2019-23 and in this policy.

Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH)notice and guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), the Consolidated Appropriations Act of 2016 (Public Law 114-113,approved December 18, 2015) the Consolidated Appropriations Act, 2017 (Public Law 115-31, approved May 5, 2017), and section 237 of Title II, Division L, Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Public Law 115-141, approved March 23, 2018)collectively, the "RAD Statute."

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Requirements specific to the RAD program may be found in the following:

- Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing.
- Notice PIH 2019-23 was immediately applicable at the time of closing to all projects converting assistance (notwithstanding execution of a commitment for conversion).
- Notice PIH 2019-23 was published on September 5, 2019.
- Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.
- Notice PIH 2012-32, REV-3 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published January 12, 2017.
- Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period.
- Notice PIH 2012-32, REV-2was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published June 15, 2015.
- Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.

RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (10/14)

- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)
- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.
    - This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.
- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.
    - This notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.
- RAD FAQs (http://www.radresource.net/search.cfm)

AHA Policy

Project	Closing Date	RAD Notice
The Commons at Martineztown	**December 4, 2020**	**PIH 2019-23**
6100 Harper	**August 12, 2021**	PIH 2019-23
Broadway McKnight	**August 5, 2021**	PIH 2019-23

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

In other words, the standard PBV program follows many of the same regulations as the tenant-based HCV program, but not all of them, and the RAD PBV program follows many of the same regulations as the standard PBV program, but not all of them.

MTW agencies are able to apply activities impacting the PBV program that are approved in the MTW Plan to properties converting under RAD, provided they do not conflict with RAD requirements.

18-I.C. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE

[24 CFR 983.2]
Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of AHA policies related to tenant-based assistance also apply to RAD PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

AHA Policy
Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, AHA policies for the tenant-based voucher program contained in this administrative plan also apply to the RAD PBV program and its participants. This chapter is intended to address requirements specific to the RAD PBV program only.

See Exhibit 18-1 for information on projects to which the PHA has attached RAD PBV assistance.

18-I.D. RELOCATION REQUIREMENTS

For projects that apply for conversion of assistance under the First Component of RAD and will convert November 10, 2016 or later, the following applies [Notice PIH 2016-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed. Any non-RAD PBV units located in the same project are also subject to the right to return.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. , and other requirements which may be applicable such as Section 104(d) of the Housing and Community Development Act of 1974, as amended. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. A written relocation plan is required if the RAD conversion involves permanent relocation (including a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than a year. Appendix II of Notice PIH 2016-17 contains recommended contents for a relocation plan.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- In addition, AHA must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24. The obligation due to relocating residents under RAD are broader than URA relocation assistance and payments.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to either: a) a unit at the development once rehabilitation or construction is completed, provided the resident's household is not under-housed; or b) a unit in the development which provides the same major features as the resident's unit in the development prior to the implementation of the RAD conversion.
- Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete.
- If AHA's proposed plans for conversion would preclude a resident from returning to the development, the resident must be given an opportunity to comment and/or object to such plans. AHA must alter the project plans to accommodate the resident's right to return to the development if the resident would be precluded from returning to the development.
- Examples of project plans that may preclude a resident from returning to the development include, but are not limited to:
    - Changes in the development's bedroom distribution that decrease the size of the units, resulting in the resident being under-housed;
    - The resident cannot be accommodated in the remaining assisted units due to a reduction in the number of assisted units at the development;
    - Income limit eligibility requirements associated with the LIHTC program or another program; and
    - Failure to provide a reasonable accommodation, in violation of applicable law, where reasonable accommodation may include installation of accessibility features that are needed by the resident.
- Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept an AHA or owner's offer to permanently relocate to alternative housing, and thereby waive their right to return to the development after rehabilitation or construction is completed. In this event, AHA must secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development. AHAs are prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing options. Additionally, AHA may not terminate a resident's lease if AHA fails to obtain the resident's consent and the resident seeks to exercise the right to return.
- In the case of multi-phase RAD transactions, the resident has a right to return to the development or to other converted phases of the development that are available for occupancy at the time the resident is eligible to exercise their right of return. Generally, the resident's right to return must be accommodated within the development associated with the resident's original unit, however, AHA may treat multiple converted developments on the same site as one for purposes of right to return. Should AHA seek to

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

have the resident exercise the right to return at a future phase, AHA must secure the resident's consent in writing.

- Alternative housing options may involve a variety of housing options, including but not limited to:
  - Transfers to public housing
  - Admission to other affordable housing properties subject to the applicable program rules
  - Housing choice voucher (HCV) assistance
  - Homeownership programs subject to the applicable program rules
  - Other options identified by AHA

However, for projects that applied for conversion prior to November 10, 2016, the following applies [Notice PIH 2014-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. While the PHA is not required to have a written relocation plan, HUD strongly encourages PHAs to prepare one. Appendix I of Notice PIH 2014-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

18-I.E. EQUAL OPPORTUNITY REQUIREMENTS

[24 CFR 983.8; 24 CFR 5.105; Notice PIH 2016-17]

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. These authorities prohibit discrimination and impose affirmative obligations on HUD program participants. AHA must comply with all applicable fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their need for an accessible unit must be accommodated. See the *RAD Fair Housing, Civil Rights, and Relocation Notice* [Notice PIH 2016-17] for more information.

PART II: PBV PROJECT SELECTION

18-II.A. OVERVIEW

Unlike in the standard PBV program where AHA typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH 2019-23. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

18-II.B. OWNERSHIP AND CONTROL

[Notice PIH 2019-23]

Under the PBV program, the contract administrator and the owner listed on the contract cannot be the same legal entity (i.e., the PHA cannot execute a contract with itself). To avoid this situation, the PHA may either: 1) Transfer the ownership of the project to a nonprofit affiliate or instrumentality of the PHA (including to a "single-purpose entity" that owns nothing other than the property, which will typically be a requirement of a lender or investor), or 2) The PHA can form a related entity that is responsible for management and leasing and can serve as the owner for purposes of the Section 8 HAP contract; in this scenario, the HAP is then executed between the PHA (as the contract administrator) and the PHA's related entity (as the owner for HAP contract purposes). Note that in the second scenario, both the PHA and the entity serving as the owner for HAP contract purposes will be required to sign the RAD Use Agreement [RAD Resource Desk FAQ 01/24/19].

Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or non-profit entity. HUD may also allow ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the project, but only if HUD determines that the PHA or a nonprofit entity preserves an interest in the property. The requirement for a public or non-profit entity , or preservation of an interest by a PHA or nonprofit in a property owned by a tax credit entity controlled by a for-profit entity, is satisfied if a public or non-profit entity (or entities), directly or through a wholly-owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

approved by HUD; or (7) demonstrates other ownership and control arrangements approved by HUD.

Control may be established through the terms of the project owner's governing documents or through a Control Agreement, provided that in either case amendment of the terms of control requires consent from HUD.

If the hearing will be conducted remotely, the PHA will compile a hearing packet, consisting of all documents the PHA intends to produce at the informal hearing. The PHA will send copies of the hearing packet to the family, the family's representatives, if any, and the hearing officer at least three days before the scheduled remote informal hearing. The original hearing packet will be in the possession of the PHA representative and retained by the PHA.

Documents will be shared electronically whenever possible.

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. The requirement for a public or nonprofit entity is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD.

If low-income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that AHA preserves its interest in the property. Preservation of AHA interest in the property includes but is not limited to the following:

- AHA, or an affiliate under its sole control, is the general partner or managing member;
- AHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;
- AHA retains control over leasing the property and determining program eligibility;
- AHA enters into a control agreement by which AHA retains consent rights over certain acts of the project owner and retains certain rights over the project; Other means that HUD finds acceptable

For projects that converted assistance prior to the implementation of Notice PIH 2012-32, REV-3, the following language applies:

- During both the initial term and renewal terms of the HAP contract, ownership must be either of the following:

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property; or
- A private entity, if the property has low-income tax credits. The PHA must maintain control via a ground lease.

18-II.C. AHA-OWNED UNITS

[24 CFR 983.59, FR Notice 1/18/17, and Notice PIH 2017 21]
If the project is AHA-owned, rent-setting and inspection functions set out in 24 CFR 983.59 must be conducted by an independent entity approved by HUD.

The definition of *ownership or control* provided under Notice PIH 2019-23 (listed above) is used specifically to determine whether an AHA retains control over a project for purposes of HUD's requirement for ownership or control of the covered project under RAD. For purposes of determining whether an independent entity will perform certain functions for the project, the definition of *AHA-owned* under Notice PIH 2017-21 is used. This is the same definition used for standard PBV units. In some cases, a project may meet the RAD definition of ownership or control but may not be considered AHA-owned for purposes of requiring an independent entity.

The independent entity that performs the program services may be the unit of general local government for AHA jurisdiction (unless AHA is itself the unit of general local government or an agency of such government), or another HUD-approved public or private independent entity.

AHA may compensate the independent entity from AHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). AHA may not use other program receipts to compensate the independent entity for its services. AHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

AHA Policy
If units converted to PBV under RAD are AHA-owned housing, the AHA will use Santa Fe Civic Housing Authority, the Bernalillo County Housing Department, or other qualified entity as the HUD-approved independent entity.

18-II.D. SUBSIDY LAYERING REQUIREMENTS

[Notice PIH 2019-23;Notice PIH 2012-32, REV-3; Notice PIH 2012-32,REV2]
For projects governed by Notice PIH 2019-23, the following language applies:

- In the case of AHA that will no longer have ACC units as a result of the pending or simultaneous closing or have less than 50 units remaining and have initiated procedures to dispose of their final ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project or projects though the conversion. However, the PHA must estimate and plan for outstanding liabilities and costs and must follow Notice PIH 2016-23 or successor notice regarding the administrative activities required to terminate the ACC if it , has no plans to develop additional public housing.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- In the case where AHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, AHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- Following execution of the HAP contract, AHA is authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, AHA may not contribute public housing program funds to the covered project unless those funds have been identified in the RCC and converted at closing for Section RAD purposes.

For projects governed by Notice PIH 2012-32, REV-3, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no longer has units under the ACC and has no plans to develop additional public housing, the PHA may:
    - Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA closeout reserve). Any funds not needed for public housing closeout costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or
    - Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.
- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved "sources and uses" attached to the RCC.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

For projects governed by the requirements of Notice PIH 2012-32, REV-2, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

18-II.E. PBV PERCENTAGE LIMITATION & UNIT CAP

[Notice PIH 2019-23]
PBV Percentage Limitation
Covered projects do not count against the maximum amount of assistance AHA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the authorized units allocated to AHA under the HCV program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

Unit Cap Limitation
When HUD published REV-3 of Notice PIH 2012-32, the cap on the number of assisted units in each project was eliminated. Under the standard PBV program the cap is set at the greater of 25 units or 25 percent of the units in the project. HUD is waiving this requirement, and projects governed by Notice PIH 2019-23 and Notice PIH 2012-32, REV-3 have no cap on the number of units that may receive PBV assistance in a project.

However, for projects that are governed by REV-2 of Notice PIH 2012-32, the cap on the number of PBV units in the project is increased to 50 percent. In these projects, however, provided units met certain exception criteria, the PHA may have converted a larger number of units to RAD PBV. For projects governed by the requirements of Notice PIH 2012-32, REV-2 **only**, the following language applies:

- In general, the PHA may not provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 50 percent of the number of dwelling units (assisted or unassisted) in the project. However, PHAs may exceed the 50 percent limitation when units in the project are occupied by elderly and/or disabled families or families that will receive supportive services. These units are known as "excepted units" and do not count toward the project cap.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- For projects governed by the requirements of Notice PIH 2012-32, REV-2 choosing to include excepted units, additional policy decisions may be required.

AHA Policy
For projects governed by Notice PIH 2012-32, REV-2, the PHA will not provide RAD PBV assistance for any excepted units.

18-II.F. SITE SELECTION STANDARDS

[Notice PIH 2019-23; Notice PIH 2016 17]
Site selection requirements set forth in 24 CFR 983.57 apply to RAD PBV, with the exception of 983.57(b)(1) and (c)(2). HUD waives the provisions regarding deconcentration of poverty and expanding housing and economic opportunity for existing housing sites.

To facilitate the uniform treatment of residents and units, any non-RAD PBV units located in the same project are subject to the terms of this provision.

HUD will conduct a front-end civil rights review of AHA's proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

AHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

18-II.G. ENVIRONMENTAL REVIEW

[Notice PIH2019-23; Environmental Review Requirements for RAD Conversions, March 2019]
HUD cannot approve an applicant's financing plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted no later than the applicant's financing plan. HUD will not issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH 2019-23. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART III: DWELLING UNITS

18-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the RAD PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

18-III.B. HOUSING QUALITY STANDARDS

[24 CFR 983.101]
The housing quality standards (HQS) for the tenant-based program generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

Lead-based Paint [24 CFR 983.101(c); Notice PIH 2019-23]
The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, and 40 CFR 745.227,apply to the PBV program.

18-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

[Notice PIH 2016-17]
Federal accessibility requirements apply to all conversions, whether they entail new construction, alternations, or existing facilities The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. AHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

18-III.D. INSPECTING UNITS

Initial Inspection [RAD Quick Reference Guide; Notice PIH 2019-23]
Under standard PBV regulations at 24 CFR 983.103(b), a PHA may not enter into a HAP contract until the PHA has determined all units comply with HQS. It is the responsibility of the contract administrator to perform this initial inspection (unless units are PHA-owned). In order to accommodate projects in which repairs are conducted, however, HUD has waived this

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

requirement when units are undergoing rehabilitation. In this case, units must meet HQS by the date indicated in the RAD Conversion Commitment (RCC).

Turnover Inspections [24 CFR 983.103(c), FR Notice 1/18/17, and Notice PIH 2017-20]
Before providing assistance to a new family in a contract unit, AHA must inspect the unit. AHA may not provide assistance on behalf of the family until the unit fully complies with HQS.

Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]
At least once every 24 months during the term of the HAP contract, AHA must inspect a random sample consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement.

> **AHA Policy**
> The AHA will inspect once every 24 months a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, AHA must reinspect 100 percent of the contract units in the building.

Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05]
In the case of mixed-finance properties that are subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

> **AHA Policy**
> The AHA will not rely on alternative inspection standards.

Other Inspections [24 CFR 983.103(e)]
AHA must inspect contract units whenever needed to determine that the contract units comply with HQS, and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. AHA must take into account complaints and any other information coming to its attention in scheduling inspections.

AHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting AHA supervisory quality control HQS inspections, AHA should include a representative sample of both tenant-based and project-based units.

Inspecting AHA-Owned Units [24 CFR 983.103(f) ; Notice PIH 2017-21]
In the case of AHA-owned units, all required inspections must be performed by an independent entity designated by AHA and approved by HUD. The independent entity must furnish a copy of each inspection report to AHA and to the HUD field office where the project is located. AHA

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by AHA-owner.

PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT

18-IV.A. OVERVIEW

[PBV Quick Reference Guide 10/14]
Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in the Commitment to enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with AHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions.

18-IV.B. HAP CONTRACT REQUIREMENTS

Contract Information [PBV Quick Reference Guide 10/14; Notice PIH 2019-23]
The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-52621).). For closings on or after January 1, 2018, HUD incorporated the RAD rider directly into the standard PBV HAP contract. For closing that occurred prior to January 1, 2018, the RAD rider must be attached to the PBV HAP contract.

The distinction between "existing housing" and "rehabilitated and newly constructed housing" is overridden by RAD requirements. The project must also have an initial RAD use agreement. All public housing RAD conversion properties financed with LIHTC are also required to include an LIHTC rider.

Execution and Effective date of the HAP Contract [RADBlast 7/11/16]
RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, AHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

Term of HAP Contract [Notice PIH 2019-23]
The initial term of the HAP contract may not be for less than 15 years and may be for a term of up to 20 years upon request of the owner and with approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. Contracts are subject to the terms and conditions applicable at the time of each offer

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

and further subject to the availability of appropriations for each year of each such renewal. To implement this provision, HUD is waiving section 8(o)(13)(F) of The United States Housing Act of 1937, which permits a minimum term of one year, as well as 24 CFR 983.205(a), which governs the contract term.

Agreement to Enter into a HAP (AHAP) Contract [Notice PIH 2019-23]
For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D, are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable.

Mandatory Contract Renewal [Notice 2019-23]
By statue, upon contact expiration, the agency administering the vouchers will offer, and AHA will accept, renewal of the contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. The contract is subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing AHA discretion to renew the contract will not apply.

In the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement.

Remedies for HQS Violations [24 CFR 983.208(b)]
AHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If AHA determines that a contract unit does not comply with HQS, AHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

> **AHA Policy**
> AHA will abate and terminate PBV HAP contracts for noncompliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

18-IV.C. AMENDMENTS TO THE HAP CONTRACT

Floating Units [Notice PIH 2019-23]
Upon request of the owner to the voucher agency that will administer the project, HUD will permit assistance to float among units within the project that are the same bedroom size. The unit

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

to which assistance is floated must be comparable to the unit being replaced in quality and amenities.

If AHA chooses to float units, units are not specifically identified on the HAP contract, rather the HAP contract must specify the number and type of units in the property that are RAD PBV units. The property must maintain the same number and type of RAD units from the time of the initial HAP contract execution forward.

AHA Policy
AHA will float assistance among unoccupied units within the project. Tracking of the number and type of units at the property, as well as identification of comparable units when assistance is floated, will be maintained by each property.

Reduction in HAP Contract Units [Notice PIH2019-23]
Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

AHA may not reduce the number of assisted units without written HUD approval. Any HUD approval of AHA's request to reduce the number of assisted units under contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, AHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, AHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where the development has "floating" units.

18-IV.D. HAP CONTRACT YEAR & ANNIVERSARY DATES

[24 CFR 983.302(e)]
The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. There is a single annual anniversary date for all units under a particular HAP contract.

18-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT

[24 CFR 983.210]
When the owner executes the HAP contract, he or she certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- The owner is providing all services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by AHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge, the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (this does not apply to the family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP contract execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

18-IV.F. VACANCY PAYMENTS

[24 CFR 983.352(b)]
At the discretion of AHA, the HAP contract may provide for vacancy payments to the owner for AHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by AHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner, including amounts available from the tenant's security deposit.

AHA Policy
AHA will provide vacancy payments to the owner. The HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments.

PART V: SELECTION OF PBV PROGRAM PARTICIPANTS

18-V.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION

[Notice PIH 2019-23]
Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH 2019-23 (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers reverified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for non-RAD PBV. Any non-RAD PBV units located in the same project are also subject to the right to return.

For the RAD PBV program, in-place family means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

18-V.C. ELIGIBILITY FOR PBV ASSISTANCE

[24 CFR 983.251(a) and (b)]
Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and AHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to AHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. AHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
AHA will determine an applicant family's eligibility for the RAD PBV program in accordance with the policies in Chapter 3.

18-V.D. ORGANIZATION OF THE WAITING LIST

[24 CFR 983.251(c); Notice PIH 2019-23]
The standard PBV regulations at 24 CFR 983.251 set out program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. Any non-RAD PBV units located in the same project are also subject to these requirements.

AHA Policy
AHA will establish and manage separate waiting lists for individual projects or buildings that are receiving RAD PBV assistance. The AHA will accept applications as needed throughout the year. Applicants will be placed on the waiting list according to any project-based preference(s) for which they qualify, and the date and time their complete application is received by the AHA. The AHA may establish selection criteria or preferences for occupancy of particular RAD PBV units. The AHA currently has waiting lists for the following RAD PBV projects:

- The Commons at Martineztown, 415 Fruit Ave NE, 615 Arno NE, 320 Roma NE

The AHA anticipates adding waiting lists for the following PBV projects:

- 1840-1880 Broadway Place NE
- 6100 Harper NE

For any applicants on the public housing waiting list that are likely to be ineligible for admission to a covered project converting to PBV because the household's TTP is likely to exceed the RAD gross rent, AHA will consider transferring such household, consistent with program requirements for administration of waiting lists, to AHA's remaining public housing waiting lists or to another voucher waiting list, in addition to transferring such household to the waiting list for the covered project.

To the extent any wait list relies on the date and time of application, the applicants shall have priority on the wait lists to which their application was transferred in accordance with the date and time of their application to the original waiting list.

AHA will maintain the project-specific waiting list in accordance with all applicable civil rights and fair housing regulations found at 24 CFR 903.7(b)(2)(ii)-(iv). AHA will provide applicants full information about each development, including an estimate of the wait time, location, occupancy, number and size of accessible units, and amenities like day care, security, transportation, and training programs at each development with a site-based waiting list. The system for selection will be consistent with all applicable civil rights and fair housing laws and regulations and may not be in conflict with any imposed or pending court order, settlement agreement, or complaint brought by HUD.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The PHA will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

18-V.E. SELECTION FROM THE WAITING LIST

[24 CFR 983.251(c)]
After conversion to RAD PBV, applicants who will occupy units with RAD PBV assistance must be selected from AHA's waiting list. AHA may establish selection criteria or preferences for occupancy of particular PBV units.

Income Targeting [24 CFR 983.251(c)(6); Notice PIH 2019-23]
At least 75 percent of the families admitted to AHA's tenant-based and project-based voucher programs during AHA fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements. Any non-RAD PBV units located in the same project are also subject to these requirements.

Units with Accessibility Features [24 CFR 983.251(c)(7)]
When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, AHA must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d); FR Notice 11/24/08; Notice PIH 2019-23]
AHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units.

AHA Policy
Any preferences for particular RAD PBV projects or units may be determined by project owner, regulatory or funding agencies and will be described in the online application.

The AHA will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

18-V.F. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]
AHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refusing to list the applicant on the waiting list for tenant-based voucher assistance
- Denying any admission preference for which the applicant qualifies
- Changing the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under AHA's selection policy
- Removing the applicant from the tenant-based voucher waiting list

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Disapproval by Landlord [24 CFR 983.251(e)(2)]
If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

Acceptance of Offer [24 CFR 983.252]
Family Briefing
When a family accepts an offer for PBV assistance, AHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, AHA must provide a briefing packet that explains how AHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities
If an applicant family's head or spouse is disabled, AHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, AHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency
AHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

18-V.G. OWNER SELECTION OF TENANTS

[24 CFR 983.253]
The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

Leasing [24 CFR 983.253(a)]
During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by AHA from AHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on AHA's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]
The owner must promptly notify AHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, AHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. AHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
The owner must notify AHA in writing (mail, fax, or email) within five business days of learning about any vacancy or expected vacancy.

AHA will make every reasonable effort to refer families to the owner within 15 business days of receiving such notice from the owner.

18-V.H. TENANT SCREENING

[24 CFR 983.255]
AHA Responsibility
AHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, AHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

AHA Policy
AHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

AHA must provide the owner with an applicant family's current and prior address (as shown in AHA records) and the name and address (if known by AHA) of the family's current landlord and any prior landlords.

In addition, AHA may offer the owner other information AHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. AHA must provide applicant families a description of AHA policy on providing information to owners, and AHA must give the same types of information to all owners.

AHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking, except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(c)].

AHA Policy
AHA will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. AHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

Owner Responsibility
The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills
- Caring for a unit and premises

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Respecting the rights of other residents to the peaceful enjoyment of their housing
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others
- Compliance with other essential conditions of tenancy

PART VI: OCCUPANCY

18-VI.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by AHA, referred to an owner, and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

18-VI.B. LEASE

[24 CFR 983.256]
The tenant must have legal capacity to enter into a lease under state and local law. Legal capacity means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

The tenant and the owner must enter into a written lease agreement that is signed by both parties. The tenancy addendum must include, word-for-word, all provisions required by HUD.

Lease Requirements [24 CFR 983.256(c); Notice PIH 2019-23]
The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided by the owner; and
- The amount of any charges for food, furniture, or supportive services.
- AHA must include resident procedural rights for termination notification and grievance procedures in the owner's lease. These requirements are not part of the regular PBV program but are required under RAD.

Tenancy Addendum [24 CFR 983.256(d)]
The tenancy addendum in the lease must state:

- The program tenancy requirements
- The composition of the household as approved by AHA (the names of family members and any AHA-approved live-in aide)

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f); PBV Quick Reference Guide 10/14]
Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that coincides with—and must be signed on or before—the effective date of the RAD PBV HAP contract.

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g., month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- AHA terminates the HAP contract
- AHA terminates assistance for the family

Changes in the Lease [24 CFR 983.256(e)]
If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give AHA a copy of all changes.

The owner must notify AHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by AHA and in accordance with the terms of the lease relating to its amendment. AHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257; Notice PIH2019-23]
With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for "good cause" does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner's lease as well as AHA's administrative plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that AHAs provide adequate written notice of termination of the lease which may not be less than:

- A reasonable period of time, but not to exceed 30 days:
    - If the health or safety of other tenants, AHA employees, or persons residing in the immediate vicinity of the premises is threatened; or

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

  - In the event of any drug-related or violent criminal activity or any felony conviction
- Not less than14 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

These provisions apply to non-RAD PBV units located in the project as well.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]
The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by AHA policy. According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days. AHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 983.258; Notice PIH 2019-23]
Current residents living in the property prior to conversion are placed on and remain under the HAP contract when TTP equals or exceeds gross rent. In this case, until such time as the family's TTP falls below the gross rent, the family will pay the owner the lesser of their TTP minus the utility allowance or any applicable maximum rent under the LIHTC program. The family will continue to pay this amount until/if circumstances change and HAP is paid on their behalf. In other words, assistance may subsequently be reinstated if the tenant becomes eligible for assistance. In such cases, the resident is still considered a program participant. All of the family obligations and protections under RAD and standard PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP contract. Any non-RAD PBV units located in the same project are also subject to these requirements.

Unless a waiver is requested and approved, following conversion, 24 CFR 983.53(d) applies, and any new admission referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program. The PHA may request a waiver from HUD in order to admit otherwise eligible families whose TTP exceeds gross rent and to allow the units those families occupy to remain under the HAP contract even if the PHA has not paid HAP for the family in 180 days.

Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. The cessation of housing assistance payments does not affect the family's other rights under its lease, nor does it preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within the 180 day window. If a family's assistance is terminated as a result of their zero HAP status, AHA must remove the unit from the HAP contract. If the project is fully assisted, AHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, AHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
AHA will not request a waiver from HUD to allow families whose TTP initially exceeds gross rent to occupy units.

If a participating family who was admitted after the RAD conversion receive zero assistance and subsequently experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify AHA of the change and request an interim reexamination before the expiration of the 180-day period.

Security Deposits [24 CFR 983.259; PBV Quick Reference Guide 10/14]
Owners are permitted to recognize security deposit amounts that have been previously provided by tenants who are in-place at the time of the RAD conversion. Otherwise, the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant. AHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

AHA Policy
AHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. AHA has no liability or responsibility for payment of any amount owed by the family to the owner.

18-VI.C. PUBLIC HOUSING FSS & ROSS PARTICIPANTS

[Notice PIH 2019-23]
Current PH FSS participants will continue to participate in the PHA's FSS program, and AHA will be allowed to use any PH FSS funds granted previously or pursuant to the current fiscal year (FY) PH FSS notice of funding availability (NOFA), to serve those FSS participants who live in units converted to RAD and who will as a result be moving to the HCV FSS program. AHA must convert the PH FSS program participants at the covered project to their HCV FSS program.

Residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

At the completion of the FSS grant, AHA should follow the normal closeout procedures outlined in the grant agreement. If AHA continues to run an FSS program that serves PH and/or HCV participants, AHA will continue to be eligible (subject to NOFA requirements) to apply for FSS funding.

Current Resident Opportunities and Self-Sufficiency–Service Coordinators (ROSS–SC) program grantees will be able to finish out their current ROSS–SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS–SC grants.

At the completion of the ROSS-SC grant, AHA should follow the normal closeout procedures outlined in the grant agreement. Please note that ROSS-SC grantees may be a non-profit or local resident association and this consequence of a RAD conversion may impact those entities.

Any non-RAD PBV units located in the same project are also subject to these requirements.

18-VI.D. RESIDENT PARTICIPATION & FUNDING

[Notice PIH 2019-23]
Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

18-VI.E. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260; Notice PIH 2019-23]
All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the new or rehabbed project. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family. Any non-RAD PBV units located in the same project are also subject to these requirements.

Following conversion, the standard PBV regulations apply. If AHA determines that a family is occupying a wrong-size unit, based on AHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, AHA must promptly notify the family and the owner of this determination, and AHA must offer the family the opportunity to receive continued housing assistance in another unit.

AHA Policy
AHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of AHA's

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

determination. AHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project
- PBV assistance in another project
- Tenant-based voucher assistance

If AHA offers the family a tenant-based voucher, AHA must terminate the housing assistance payments for a wrong-size or accessible unit at the earlier of the expiration of the term of the family's voucher, including any extension granted by AHA, or the date upon which the family vacates the unit. If the family does not move out of the wrong-size unit or accessible unit by the expiration of the term of the family's voucher, AHA must remove the unit from the HAP contract.

If AHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by AHA, or both, AHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by AHA and remove the unit from the HAP contract.

AHA Policy
When AHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, AHA will terminate the housing assistance payments at the expiration of this 30-day period.

AHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.261]
The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to AHA.

Choice Mobility [Notice PIH 2019-23]
If the family wishes to move with continued tenant-based assistance, the family must contact AHA to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with lease requirements, AHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If a voucher or other comparable tenant-based assistance is not immediately available, AHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
Prior to providing notice to the owner to terminate the lease, the family may submit a written request to AHA for a choice mobility voucher at any time after completing the 12-month occupancy requirement.

The family will remain eligible to request a choice mobility voucher as long as they continue living at the same covered project. If a family moves from one covered project to another covered project prior to completing their 12-month occupancy requirement, their 12-month clock will reset. The family must wait 12 months from the date of move at the new property before they may request another choice mobility voucher. If a family transfers to a different unit within the same covered project, the 12-month clock does not reset.

AHA will maintain a combined, agency-wide waiting list for all standard PBV and RAD PBV families wishing to exercise mobility after one year of tenancy. This list will be maintained separately from the tenant-based HCV list. Families on the choice mobility waiting list will be given priority over families on the tenant-based waiting list. The choice mobility waiting list will be organized by date and time of the family's written request to exercise choice mobility. The list will also identify whether families live in standard or RAD PBV units.

Turnover Cap
If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by AHA exceeds 20 percent of AHA's authorized units under its HCV ACC with HUD, AHA may establish a turnover cap. AHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If AHA chooses to establish a turnover cap and the cap is implemented, AHA must create and maintain a waiting list in the order requests from eligible households were received.

AHA Policy
The AHA will not establish a choice mobility cap.

Emergency Transfers Under VAWA
[Notice PIH 2017-08]
Except where special consideration is needed for the project-based voucher program, AHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that AHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

AHA Policy
When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, AHA will provide several options for continued assistance.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where AHA has PBV units. AHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in AHA's public housing program. Such a decision will be made by AHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. AHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking in its public housing program in order to expedite this process.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, AHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where AHA has PBV units. AHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to AHA's public housing program. AHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking as part of the public housing ACOP in order to expedite this process.

18-VI.F. REEXAMINATIONS

[PBV Quick Reference Guide 10/14]
A family living in a unit converted from public housing to RAD PBV may retain its certification date. Unless a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract, AHA does not need to recertify tenants at the point of conversion. For each family residing in a unit undergoing conversion of assistance under RAD, the administering AHA will have to submit a form HUD-50058 reflecting the family's admission to the voucher program. The effective date of the new admission will be the same as the effective date of the RAD PBV HAP contract. The form should include the same information previously found on the public housing form 50058, including the next annual reexamination date.

18-VI.G. EARNED INCOME DISALLOWANCE

[Notice PIH 2019-23]
Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR 5.617. Upon the expiration of the EID for such families, the rent adjustment will not be

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

subject to rent phase-in; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time. Any non-RAD PBV units located in the same project are also subject to these requirements.

Under the HCV program, the EID exclusion is limited to only persons with disabilities [24 CFR 5.617(b)]. In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only persons with disabilities is waived. The waiver and resulting alternative requirement only apply to tenants receiving the EID at the time of conversion. No other tenant, such as tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment), tenants that move into the property following conversion, etc., is covered by this waiver.

18-VI.H. RESIDENTS' PROCEDURAL RIGHTS

[Notice PIH 2019-23]
HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV and to non-RAD PBV units located in the same project beyond those for the standard PBV program. In addition to the regulations at 24 CFR 983.257 related to owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV require that AHA provide adequate written notice of termination of the lease, which is:

- A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction.
- Not less than 14 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

18-VI.I. INFORMAL REVIEWS & HEARINGS

[Notice PIH 2019-23]
In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)–(v) (See 16-III.C. Informal Hearings for Participants), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

- For any hearing required under 24 CFR 982.555(a)(1)(i)–(vi), the contract administrator will perform the hearing in accordance with Chapter 16 Part III: Informal Reviews and Hearings, as is the current standard in the program.
- For any additional hearings required under RAD, AHA (as owner) will perform the hearing.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

An informal hearing will not be required for class grievances or for disputes between residents not involving AHA (as owner) or contract administrator. This hearing requirement does not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and AHA (as owner) or contract administrator.

Owner must give residents notice of their ability to request an informal hearing as outlined in 24 CFR 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)–(vi). (See Chapter 16).

Owner must provide an opportunity for an informal hearing before an eviction.

PART VII: DETERMINING CONTRACT RENT

18-VII.A. INITIAL CONTRACT RENTS

[Notice PIH 2012-32, REV-3]
RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each AHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, replacement housing factor funds (RHF), and demolition disposition transitional funding (DDTF). The funding may limit the amount of initial rent for a property. A detailed explanation of the determination of current funding may be found in Attachment 1C of Notice PIH 2012-32, REV-2. Once the current funding amount is calculated, the amount is adjusted by bedroom size to determine the current funding rent. HUD uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located.

AHAs may adjust subsidy (and contract rents) across multiple projects as long as AHA does not exceed the aggregate subsidy for all of the projects AHA has submitted for conversion under RAD. This use, which HUD refers to as "bundled" rents, is permissible when AHA submits applications for two or more projects. There is no limit to the number of projects that AHA may bundle.

Notwithstanding the current funding level, the initial rents are set at the lower of:

- 110 percent of the fair market rent (FMR) or AHA's exception payment standard approved by HUD, or the alternate rent cap in AHA's MTW agreement
- Reasonable rent in comparison to the unassisted housing market
- An amount determined by current funding
    - Adjusted through rent bundling or reconfiguration of units

18-VII.B. ADJUSTING CONTRACT RENTS

[Notice PIH2019-23; PBV Quick Reference Guide 10/14]

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Contract rents will be adjusted only by HUD's operating cost adjustment factor (OCAF) at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the 1937 Act, and 24 CFR 983.301 and 983.302, concerning rent determinations, do not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in the private market, as determined by the contract administrator in accordance with 24 CFR 983.303.

Contract rents may not exceed the reasonable rent, with the exception that the contract rent for each unit may not be reduced below the initial contract rent under the initial HAP contract.

However, the rent to owner may fall below the initial contract rent in the following situations:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 983.55 (prohibition of excess public assistance)
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant

The contract rent adjustment will be the lesser of:

- The current contract rent increased by the operating cost adjustment factor (OCAF), which is published annually in the Federal Register; or
- The reasonable rent

The administering AHA (or independent entity, if the project is AHA-owned) is responsible for processing rent adjustments, at each contract anniversary date, in accordance with the prevailing OCAF.

At least 120 days before the contract anniversary date, HUD recommends that the owner submit the OCAF rent adjustment worksheet (Form HUD-9625) to AHAAHA administering the PBV assistance (or the independent entity). AHA will validate the data on the form and determine whether the rent exceeds the reasonable rent charged for comparable unassisted units in the private market, in accordance with 24 CFR 983.303. If rents would be unreasonable following application of the requested OCAF, then the rent can only be increased up to the reasonable rent. The approved rent adjustment will go into effect and the new rents to owner will take effect on the date of the contract anniversary.

Rent Decrease
Rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

18-VII.C. UTILITY ALLOWANCES

[Notice PIH 2019-23; PBV Quick Reference Guide 10/14]
When contract rent amounts are set initially, the amount does not include a utility allowance. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior to conversion. The CHAP must be updated

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

prior to conversion to reflect current public housing utility allowances. At its discretion, AHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract.

After conversion, AHA may maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517 respectively. AHA may instead, however, apply site specific utility allowances . HUD waived the requirement for the standard PBV program that the HCV utility allowance be used. If a site-specific utility allowance is used, the utility allowance is applicable to non-RAD PBV units in the project and is calculated consistent with Notice H 2015 04.

AHA Policy
AHA will use the HCV utility allowance schedule for the RAD PBV developments. On a case-by -case basis AHA may use site specific utility allowances in accordance with Notice PIH 2018-11.

18-VII.D. REASONABLE RENT

[24 CFR 983.303]
At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by AHA, except rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

How to Determine Reasonable Rent
The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, AHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Comparability Analysis
For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by AHA. The comparability analysis may be performed by AHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

AHA-Owned Units
For AHA-owned units, the amount of the reasonable rent must be determined by an independent entity approved by HUD in accordance with PBV program requirements. The independent entity

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

must provide a copy of the determination of reasonable rent for AHA-owned units to AHA and to the HUD field office where the project is located.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

PART VIII: PAYMENTS TO OWNER

18-VIII.A. HOUSING ASSISTANCE PAYMENTS

During the term of the HAP contract, AHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and AHA agree on a later date.

Except for discretionary vacancy payments, AHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by AHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

18-VIII.B. VACANCY PAYMENTS

[24 CFR 983.352]
If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if AHA determines that the vacancy is the owner's fault.

> **AHA Policy**
> If AHA determines that the owner is responsible for a vacancy and as a result is not entitled to the keep the housing assistance payment, AHA will notify the landlord of the amount of housing assistance payment that the owner must repay. AHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of AHA, the HAP contract may provide for vacancy payments to the owner. AHA may only make vacancy payments if:

- The owner gives AHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner, and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by AHA to verify that the owner is entitled to the vacancy payment.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The owner must submit a request for vacancy payments in the form and manner required by AHA and must provide any information or substantiation required by AHA to determine the amount of any vacancy payment.

AHA Policy
If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified AHA of the vacancy in accordance with the policy in Section 18-V.G. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and AHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by AHA within 10 business days of AHA's request, no vacancy payments will be made.

18-VIII.C. TENANT RENT TO OWNER

[24 CFR 983.353; Notice PIH 2019-23]
The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by AHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in AHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by AHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by AHA. The owner must immediately return any excess payment to the tenant.

Initial Certifications [Notice PIH 2019-23]
For the initial certification, the PHA will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate HAP and tenant rent for the PBV program. The PHA will use this amount until the effective date of the earlier of the family's first regular or interim recertification following the conversion. At that point, the PHA will use the family's TTP based on the recertification and the applicable utility allowance (HCV or RAD PBV site-based, as applicable) to determine PBV HAP and tenant rent. Any non-RAD PBV units located in the same project are subject to the same requirements.

Tenant and AHA Responsibilities
The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by AHA.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Likewise, AHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. AHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. AHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements
If the amount of the utility allowance exceeds the total tenant payment, AHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

AHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If AHA chooses to pay the utility supplier directly, AHA must notify the family of the amount paid to the utility supplier.

AHA Policy
AHA will make utility reimbursements directly to the family.

18-VIII.D. PHASE-IN OF TENANT RENT INCREASES

[Notice PIH 2019-23]
For in-place tenants, if the amount the tenant would pay for rent and utilities (TTP) would increase by more than the greater of 10 percent or $25 purely as a result of conversion, the rent increase will be phased in over three years. To implement this provision, HUD is waiving section 3(a)(1) of the 1937 Act, as well as 24 CFR 983.3 (definition of total tenant payment (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases. For families who were on EID at the time of conversion to RAD PBV, upon the expiration of the EID, the rent adjustment is not subject to rent phase-in.

The PHA must communicate this policy in writing to affected residents.

AHA Policy
AHA will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate the family's tenant rent in PBV. AHA will implement a three-year phase-in for in-place families whose TTP increases by more than the greater of 10 percent or $25 purely as a result of the conversion as follows:

Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 33 percent of the difference between the most recently paid TTP and the calculated PBV TTP. (If the family was paying flat rent immediately prior to conversion, the PHA will use the flat rent amount to calculate the phase-in for Year 1.)

Year 2: Year 2 annual recertification (AR) and any interim recertification (IR): 50 percent of the difference between the most recently paid TTP and the calculated PBV TTP

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Year 3: Year 3 AR and all subsequent recertification's: Full calculated TTP

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends, and tenants will pay full TTP from that point forward.

The PHA will communicate the PHA's phase-in policy in writing to the family at the time the PHA first determines that the family qualifies for a rent phase-in. Any non-RAD PBV units located in the same project are also subject to rent phase-in requirements.

18.VIII.E. OTHER FEES & CHARGE

[24 CFR 983.354]

Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

EXHIBIT 18-1: PBV DEVELOPMENT INFORMATION

DEVELOPMENT INFORMATION
Development Name: The Commons at Martineztown
Address: 415 Fruit NE, 615 Arno NE, 320 Roma NE, Albuquerque, NM
Owner Information: The Commons at Martineztown LLLP, PHA-owned
Property Management Company: Albuquerque Housing Authority
PHA-Owned: Yes

HAP CONTRACT
Closing Date: December 4, 2020
Effective Date of Contract: February 1, 2021
HOTMA Requirements: Post-HOTMA
Term of HAP Contract: 20 years

PBV UNITS

320 Roma non-RAD PBV

Number of Contract Units	Number of Bedrooms	Initial Contract Rent
8	2 Bedroom	$837
13	3 Bedroom	$1,229
3	4 Bedroom	$1,464

320 Roma RAD PBV Units

Number of Contract Units	Number of Bedrooms	Initial Contract Rent
14	1 Bedroom	$698.00
12	2 Bedroom	$712.00

615 Arno RAD PBV Units

Number of Contract Units	Number of Bedrooms	Initial Contract Rent
8	1 Bedroom	$698.00

415 Fruit RAD PBV Units

Number of Contract Units	Number of Bedrooms	Initial Contract Rent
38	1 Bedroom	$698.00

Unit Designation: Fixed
Accessible Units and Features:

415 Fruit NE:
At least 2 units will be designed for the mobility impaired and at least 1 unit will be designed for hearing or sight impaired persons, in accordance with the requirements of 24 CFR 5.22 and Section 504 of the Rehabilitation Act of 1973.

615 Arno NE:
At least 1 unit will be designed for the mobility impaired and at least 1 unit will be designed for hearing or sight impaired persons, in accordance with the requirements of 24 CFR 5.22 and Section 504 of the Rehabilitation Act of 1973.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

320 Roma NE:
At least 3 units will be designed for the mobility impaired and at least 1 unit will be designed for hearing or sight impaired persons, in accordance with the requirements of 24 CFR 5.22 and Section 504 of the Rehabilitation Act of 1973.

WAITING LIST AND SELECTION
Waiting List Type: Site-based waiting list
Preferences: Elderly and Disabled

DEVELOPMENT INFORMATION
Development Name: 6100 Harper
Address: 6100 Harper Drive NE, Albuquerque
Owner Information: 6100 Harper LLLP, PHA-owned
Property Management Company: Albuquerque Housing Authority
PHA-Owned: Yes

HAP CONTRACT
Closing Date: August 12, 2021
Effective Date of Contract: September 1, 2021
HOTMA Requirements: Post-HOTMA
Term of HAP Contract: 15 years

RAD PBV UNITS

Number of Contract Units	Number of Bedrooms	Initial Contract Rent
36	2 Bedroom	$712
19	3 Bedroom	$1,019
4	4 Bedroom	$1,225

Unit Designation: Fixed
Accessible Units and Features:
At least 3 units will be designed for the mobility impaired and at least 2 units will be designed for hearing or sight impaired persons, in accordance with the requirements of 24 CFR 5.22 and Section 504 of the Rehabilitation Act of 1973.

WAITING LIST AND SELECTION
Waiting List Type: Site-based waiting list
Preferences:
At least 25 percent of the units will be rented on a priority basis to households with children (households with children will be given preference on the waitlist until at least 25 percent of the units are occupied by households with children) and the waitlist will contain a preference for active duty or retired US military Veterans.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

DEVELOPMENT INFORMATION
Development Name: Broadway McKnight
Address: 1840-1878 Broadway Place NE, Albuquerque, NM
Owner Information: Broadway McKnight LLLP, PHA-owned
Property Management Company: Albuquerque Housing Authority
PHA-Owned: Yes

HAP CONTRACT
Closing Date: August 5, 2021
Effective Date of Contract: September 1, 2021
HOTMA Requirements: Post-HOTMA
Term of HAP Contract: 15 years

RAD PBV UNITS

Number of Contract Units	Number of Bedrooms	Initial Contract Rent
12	2 Bedroom	$712
9	3 Bedroom	$1,019
8	4 Bedroom	$1,225
1	5 Bedroom	$1,408

Unit Designation: Fixed
Accessible Units and Features:

At least 2 units will be designed for the mobility impaired and at least 1 unit will be designed for hearing or sight impaired persons, in accordance with the requirements of 24 CFR 5.22 and Section 504 of the Rehabilitation Act of 1973.

WAITING LIST AND SELECTION
Waiting List Type: Site-based waiting list
Preferences:
At least 25 percent of the units will be rented on a priority basis to households with children (households with children will be given preference on the waitlist until at least 25 percent of the units are occupied by households with children) and the waitlist will contain a preference for active duty or retired US military Veterans.

AHA currently has CHAPS for the following projects:

- 9000 Veranda
- 120 La Plata

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 19 – EMERGENCY HOUSING VOUCHER PROGRAM

Temporary Policy Supplement

INTRODUCTION

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2). Section 3202 of the ARP appropriated $5 billion for the creation, administration, and renewal of new incremental emergency housing vouchers (EHVs) and other eligible expenses related to COVID-19.

On May 5, 2021, HUD issued Notice PIH 2021-15, which described HUD's process for allocating approximately 70,000 EHVs to eligible PHAs and set forth the operating requirements for PHAs who administer them. Based on criteria outlined in the notice, HUD notified eligible PHAs of the number of EHVs allocated to their agency, and PHAs were able to accept or decline the invitation to participate in the program.

PHAs may not project-base EHVs; EHVs are exclusively tenant-based assistance.

All applicable nondiscrimination and equal opportunity requirements apply to the EHV program, including requirements that the PHA grant reasonable accommodations to persons with disabilities, effectively communicate with persons with disabilities, and ensure meaningful access for persons with limited English proficiency (LEP).

This chapter describes HUD regulations and PHA policies for administering EHVs. The policies outlined in this chapter are organized into seven sections, as follows:

Part I: Funding

Part II: Partnering Agencies

Part III: Waiting List Management

Part IV: Family Eligibility

Part V: Housing Search and Leasing

Part VI: Use of Funds, Reporting, and Financial Records

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to EHVs.

PART I: FUNDING

19-I.A. FUNDING OVERVIEW

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

The American Rescue Plan Act of 2021 (ARP) provides administrative fees and funding for the costs of administering emergency housing vouchers (EHVs) and other eligible expenses defined in Notice PIH 2021-15. These fees may only be used for EHV administration and other eligible expenses and must not be used for or applied to other PHA programs or vouchers. The PHA must maintain separate financial records from its regular HCV funding for all EHV funding.

Housing Assistance Payments (HAP) Funding
ARP funding obligated to the PHA as housing assistance payments (HAP) funding may only be used for eligible EHV HAP expenses (i.e., rental assistance payments). EHV HAP funding may not be used for EHV administrative expenses or for the eligible uses under the EHV services fee.

The initial funding term will expire December 31, 2022. HUD will provide renewal funding to the PHA for the EHVs on a calendar year (CY) basis commencing with CY 2023. The renewal funding allocation will be based on the PHA's actual EHV HAP costs in leasing, similar to the renewal process for the regular HCV program. EHV renewal funding is not part of the annual HCV renewal funding formula; EHVs are renewed separately from the regular HCV program. All renewal funding for the duration of the EHV program has been appropriated as part of the ARP funding.

Administrative Fee and Funding
The following four types of fees and funding are allocated as part of the EHV program:

- **Preliminary fees** support immediate start-up costs that the PHA will incur in implementing alternative requirements under EHV, such as outreach and coordination with partnering agencies:
    - $400 per EHV allocated to the PHA, once the consolidated annual contributions contract (CACC) is amended.
    - This fee may be used for any eligible administrative expenses related to EHVs.
    - The fee may also be used to pay for any eligible activities under EHV service fees (19-I.B).
- **Placement fees/expedited issuance reporting fees** will support initial lease-up costs and the added cost and effort required to expedite leasing of EHVs:
    - $100 for each EHV initially leased, if the PHA reports the voucher issuance date in Public Housing Information Center–Next Generation (PIC–NG) system within 14 days of voucher issuance or the date the system becomes available for reporting.
    - Placement fees:
        - $500 for each EHV family placed under a HAP contract effective within four months of the effective date of the ACC funding increment; or
        - $250 for each EHV family placed under a HAP contract effective after four months but less than six months after the effective date of the ACC funding increment.
        - HUD will determine placement fees in the event of multiple EHV allocations and funding increment effective dates.
    - Placement/expedited issuance fees only apply to the initial leasing of the voucher; they are not paid for family moves or to turnover vouchers.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

- **Ongoing administrative fees,** which are calculated in the same way as the standard HCV program:
  - PHAs are allocated administrative fees using the full column A administrative fee amount for each EHV under contract as of the first day of each month.
  - Ongoing EHV administrative fees may be subject to proration in future years, based on available EHV funding.
- **Services fees,** which are a one-time fee to support PHAs' efforts to implement and operate an effective EHV services program in its jurisdiction (TPS-I.B):
  - The fee is allocated once the PHA's CACC is amended to reflect EHV funding.
  - The amount allocated is $3,500 for each EHV allocated.

19-I.B. SERVICE FEES

Services fee funding must be initially used for defined eligible uses and not for other administrative expenses of operating the EHV program. Service fees fall into four categories:

- Housing search assistance
- Security deposit/utility deposit/rental application/holding fee uses
- Owner-related uses
- Other eligible uses such as moving expenses or tenant-readiness services

The PHA must establish the eligible uses and the parameters and requirements for service fees in the PHA's administrative plan.

AHA Policy

The eligible uses for service fees include:

- **Application fees/non-refundable administrative or processing fees/refundable application deposit assistance.** The PHA may choose to assist the family with some or all these expenses.
- **Holding fees.** Fees an owner requests that are rolled into the security deposit after an application is accepted but before a lease is signed. The PHA may cover part or all of the holding fee for units where the fee is required by the owner after a tenant's application has been accepted but before the lease signing. The PHA and owner must agree how the holding fee gets rolled into the deposit, and under what conditions the fee will be returned. In general, owners need to accept responsibility for making needed repairs to a unit required by the initial housing quality standards (HQS) inspections and can only keep the holding fee if the client is at fault for not entering into a lease.
- **Security deposit assistance.** The amount of the security deposit assistance may not exceed the lesser of two months' rent to owner, the maximum security deposit allowed under applicable state and/or local law, or the actual security deposit required by the owner. The PHA may pay the security deposit assistance directly to the owner or may pay the assistance to the family. If paid to the family, the PHA will require documentation that the family paid the security deposit.
- **Utility deposit assistance/utility arrears**. The PHA may provide utility deposit assistance for some or all of the family's utility deposit expenses. Assistance can

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

be provided for deposits (including connection fees) required for the utilities to be supplied by the tenant under the lease. The PHA may pay the utility deposit assistance directly to the utility company or may pay the assistance to the family. If paid to the family, the PHA will require documentation the family paid the utility deposit. The PHA will require the utility supplier or family to return the utility deposit assistance to the PHA at such time the deposit is returned by the utility supplier (less any amounts retained by the utility supplier). In addition, some families may have large balances with gas, electric, water, sewer, or trash companies that will make it difficult if not impossible to establish services for tenant-supplied utilities. The PHA may also provide the family with assistance to help address these utility arrears to facilitate leasing. Utility deposit assistance returned to the PHA will be used for either services fee eligible uses or other EHV administrative costs, as required by HUD.

- **Renter's insurance if required by the lease.** The PHA may choose to assist the family with some or all this cost.

Any services fee assistance that is returned to the AHA after its initial or subsequent use may only be applied to the eligible services fee uses defined in Notice PIH 2021-15 (or subsequent notice) or other EHV administrative costs. Any amounts not expended for these eligible uses when the AHA's EHV program ends must be remitted to HUD. An Addendum will be added to the HAP contract specifying the conditions wherein AHA will recoup these service fees.

Use of these funds will be on a first come first serve basis with a maximum of $3,000 allowed per applicant. Each request will be reviewed to confirm that requests are eligible expenses, are reasonable in relation to current market conditions, are not above the allowed maximum, and have appropriate supporting documentation.

PART II: PARTNERING AGENCIES

19-II.A. CONTINUUM OF CARE (CoC)

PHAs that accept an allocation of EHVs are required to enter into a Memorandum of Understanding (MOU) with the Continuum of Care (CoC) to establish a partnership for the administration of EHVs.

AHA Policy
AHA has entered into an MOU with The New Mexico Coalition to End Homelessness.

19-II.B. OTHER PARTNERING ORGANIZATIONS

The PHA may, but is not required to, partner with other organizations trusted by persons experiencing homelessness, such as victim services providers (VSPs) and other community partners. If the PHA chooses to partner with such agencies, the PHA must either enter into an MOU with the partnering agency or the partnering agency may be added to the MOU between the PHA and CoC.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
AHA has not added another agency to the MOU with the CoC.

19-II.C. REFERRALS

CoC and Partnering Agency Referrals
The primary responsibility of the CoC under the MOU with the PHA is to make direct referrals of qualifying individuals and families to the PHA. The PHA must generally refer a family that is seeking EHV assistance directly from the PHA to the CoC or other referring agency for initial intake, assessment, and possible referral for EHV assistance. Partner CoCs are responsible for determining whether the family qualifies under one of the four eligibility categories for EHVs. The CoC or other direct referral partner must provide supporting documentation to the PHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance.

AHA Policy
The CoC or partnering agency must establish and implement a system to identify EHV-eligible individuals and families within the agency's caseload and make referrals to the AHA. The CoC or other partnering agency must certify that the EHV applicants they refer to the AHA meet at least one of the four EHV eligibility criteria. The AHA will maintain a copy of the referral or certification from the CoC or other partnering agency in the participant's file along with other eligibility paperwork.

AHA will receive applicants for the EHV Program through a referral system implemented by the Albuquerque's Continuum of Care (CoC) entity. There are four (4) populations that are eligible for Emergency Housing Vouchers: (1) homeless; (2) at risk of homelessness; (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or (4) recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability. Preference will be given to "individuals and/or families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking" and "homeless" populations. Placement on the EHV waitlist for preference groups will be handled on a first come first serve basis unless the Authority receives referrals for both populations at the same time. In those instances the Authority will give preference to households "fleeing, or attempting to flee, domestic violence, dating violence, sexual assault".

Offers of Assistance with CoC Referral
The PHA may make an EHV available without a referral from the CoC or other partnering organization in order to facilitate an emergency transfer under VAWA in accordance with the PHA's Emergency Transfer Plan (ETP) in Chapter 16.

The PHA must also take direct referrals from outside the CoC if:

- The CoC does not have a sufficient number of eligible families to refer to the PHA; or

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- The CoC does not identify families that may be eligible for EHV assistance because they are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking.

If at any time the PHA is not receiving enough referrals or is not receiving referrals in a timely manner from the CoC or other partner referral agencies (or the PHA and CoC cannot identify any such alternative referral partner agencies), HUD may permit the PHA on a temporary or permanent basis to take EHV applications directly from applicants and admit eligible families to the EHV program in lieu of or in addition to direct referrals in those circumstances.

PART III: WAITING LIST MANAGEMENT

19-III. A. HCV WAITING LIST

The regulation that requires the PHA to admit applicants as waiting list admissions or special admissions in accordance with admission policies in Chapter 4 does not apply to PHAs operating the EHV program. Direct referrals are not added to the PHA's HCV waiting list.

The PHA must inform families on the HCV waiting list of the availability of EHVs by, at a minimum, either by posting the information to their website or providing public notice in their respective communities in accordance with the requirements listed in Notice PIH 2021-15.

AHA Policy
AHA will post information about the EHV program for families on the PHA's HCV waiting list on their website. The notice will:

- Describe the eligible populations to which EHVs are limited
- Clearly state that the availability of these EHVs is managed through a direct referral process
- Advise the family to contact the CoC if the family believes they may be eligible for EHV assistance

AHA will ensure effective communication with persons with disabilities, including those with vision, hearing, and other communication-related disabilities in accordance with Chapter 2. The AHA will also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP) in accordance with Chapter 2.

19-III.B. EHV WAITING LIST

The HCV regulations requiring the PHA to operate a single waiting list for admission to the HCV program do not apply to PHAs operating the EHV program. Instead, when the number of applicants referred by the CoC or partnering agency exceeds the EHVs available, the PHA must maintain a separate waiting list for EHV referrals, both at initial leasing and for any turnover vouchers that may be issued prior to September 30, 2023.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Further, the EHV waiting list is not subject to PHA policies in Chapter 4 regarding opening and closing the HCV waiting list. The PHA will work directly with its CoC and other referral agency partners to manage the number of referrals and the size of the EHV waiting list.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

19-III.C. PREFERENCES

HCV Waiting List Preferences

If local preferences are established by the PHA for HCV, they do not apply to EHVs. However, if the PHA has a homeless preference or a VAWA preference for the HCV waiting list, the PHA must adopt additional policies related to EHVs in accordance with Notice PIH 2021-15.

AHA Policy

AHA will strive to house 125 participants from the following populations each year using its EHV and HCV Programs:

- EHV Program eligible populations: homeless; at risk of homelessness; fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability. A preference will be given to individuals or families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking and/or individuals or families who are homeless.
- Individuals or families in transitional, rapid rehousing or permanent supportive housing programs that meet the following criteria will be eligible for this preference:
  (1) The supportive housing program serves people experiencing homelessness
  (2) The supportive housing program is located in the Albuquerque Housing Authority's (AHA) service area
  (3) The supportive housing program is willing to provide a letter to AHA verifying the resident is a participant and is willing to assist the applicant with the Housing Choice Voucher Program application process
  (4) If possible, the supportive housing program will make a good faith effort to provide or provide linkages to case management or comprehensive community support services to the participant for at least 3 months after the participant enters the Housing Choice Voucher Program
  (5) At least 20% of the supportive housing program budget comes from local, state or federal government funding.

Of the 125 vouchers targeted to these populations 68 of these vouchers will be Emergency Housing vouchers used to serve individuals or families who are (1) homeless; (2) at risk of homelessness; (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or (4) recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability A preference will be given to individuals or families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking and/or individuals or families who are homeless.

EHV Waiting List Preferences

With the exception of a residency preference, the PHA may choose, in coordination with the CoC and other referral partners, to establish separate local preferences for EHVs. The PHA may, however, choose to not establish any local preferences for the EHV waiting list.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
EHV Program applicants will be maintained as a separate waitlist that will give preference to individuals or families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking and/or individuals or families experiencing homelessness.

PART IV: FAMILY ELIGIBLTY

19-IV.A. OVERVIEW

The CoC or referring agency determines whether the individual or family meets any one of the four eligibility criteria described in Notice PIH 2021-15 and then refers the family to the PHA. The PHA determines that the family meets other eligibility criteria for the HCV program, as modified for the EHV program and outlined below.

19-IV.B. REFERRING AGENCY DETERMINATION OF ELIGIBLITY

In order to be eligible for an EHV, an individual or family must meet one of four eligibility criteria:

- Homeless as defined in 24 CFR 578.3;
- At risk of homelessness as defined in 24 CFR 578.3;
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking (as defined in Notice PIH 2021-15), or human trafficking (as defined in the 22 U.S.C. Section 7102); or
- Recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability as determined by the CoC or its designee in accordance with the definition in Notice PIH 2021-15.

As applicable, the CoC or referring agency must provide documentation to the PHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance. The PHA must retain this documentation as part of the family's file.

19-IV.C. PHA SCREENING

Overview
HUD waived 24 CFR 982.552 and 982.553 in part for the EHV applicants and established alternative requirement for mandatory and permissive prohibitions of admissions. Except where applicable, PHA policies regarding denials in Chapter 3 of this policy do not apply to screening individuals and families for eligibility for an EHV. Instead, the EHV alternative requirement listed in this section will apply to all EHV applicants.

The mandatory and permissive prohibitions listed in Notice PIH 2021-15 and in this chapter, however, apply only when screening the individual or family for eligibility for an EHV. When adding a family member after the family has been placed under a HAP contract with EHV assistance, the regulations at 24 CFR 982.551(h)(2) apply. Other than the birth, adoption, or

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

court-awarded custody of a child, the PHA must approve additional family members and may apply its regular HCV screening criteria in Chapter 3 in doing so.

Mandatory Denials
Under alternative requirements for the EHV program, mandatory denials for EHV applicants include:

- 24 CFR 982.553(a)(1)(ii)(C), which prohibits admission if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
- 24 CFR 982.553(a)(2)(i), which prohibits admission to the program if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program.

The PHA must deny admission to the program if any member of the family fails to sign and submit consent forms for obtaining information as required by 24 CFR 982.552(b)(3) but should notify the family of the limited EHV grounds for denial of admission first.

> **AHA Policy**
> While AHA will deny admission to the program if any adult member (or head of household or spouse, regardless of age) fails to sign and submit consent forms, the AHA will first notify the family of the limited EHV grounds for denial of admission as part of the notice of denial that will be mailed to the family.

Permissive Denial
Notice PIH 2021-15 lists permissive prohibitions for which the PHA may, but is not required to, deny admission to EHV families. The notice also lists prohibitions that, while allowable under the HCV program, may not be used to deny assistance for EHV families.

If the PHA intends to establish permissive prohibition policies for EHV applicants, the PHA must first consult with its CoC partner to understand the impact that the proposed prohibitions may have on referrals and must take the CoC's recommendations into consideration.

> **AHA Policy**
> In consultation with the CoC, the AHA will apply permissive prohibition to the screening of EHV applicants. Determinations using permissive prohibitions will be made based on an individualized assessment of relevant mitigating information in accordance with policies in Section 3-III.E.
>
> AHA will establish the following permissive prohibitions:
>
> - If the AHA determines that any household member is currently engaged in, or has engaged in within the previous 12 months:
> - Violent criminal activity
> - Other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program within the previous 12 months.
- If the family engaged in or threatened abusive or violent behavior toward AHA personnel within the previous 12 months.

The AHA will also deny assistance to household members already receiving assistance from another program in accordance with Section 9.h. of Notice PIH 2021-15.

Prohibitions based on criminal activity for the eligible EHV populations regarding drug possession will be considered apart from criminal activity against persons (i.e., violent criminal activity).

In compliance with PIH 2021-15, the PHA **will not** deny an EHV applicant admission regardless of whether:

- Any member of the family has been evicted from federally assisted housing in the last five years;
- AHA has ever terminated assistance under the program for any member of the family;
- The family currently owes rent or other amounts to the AHA or to another AHA in connection with Section 8 or public housing assistance under the 1937 Act;
- The family has not reimbursed any AHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease;
- The family breached an agreement with the AHA to pay amounts owed to a AHA, or amounts paid to an owner by a AHA;
- The family would otherwise be prohibited admission under alcohol abuse standards established by the AHA in accordance with 24 CFR 982.553(a)(3);
- The AHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity.

19-IV.D. INCOME VERIFICATION AT ADMISSION

Self-Certification at Admission

The requirement to obtain third-party verification of income in accordance with Notice PIH 2018-18 does not apply to the EHV program applicants at admission, and alternatively, PHAs may consider self-certification the highest form of income verification at admission. As such, PHA policies related to the verification of income in Section 7-I.B. do not apply to EHV families at admission. Instead, applicants must submit an affidavit attesting to their reported income, assets, expenses, and other factors that would affect an income eligibility determination.

Additionally, applicants may provide third-party documentation that represents the applicant's income within the 60-day period prior to admission or voucher issuance but is not dated within 60 days of the PHA's request.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA Policy
Any documents used for verification must be the original (not photocopies) and dated within the 60-day period prior to admission. The documents must not be damaged, altered, or in any way illegible.

Printouts from webpages are considered original documents.

Any family self-certifications must be made in a format acceptable to the AHA and must be signed by the family member whose information or status is being verified.

The AHA will incorporate additional procedures to remind families of the obligation to provide true and complete information in accordance with Chapter 14. The AHA will address any material discrepancies (i.e., unreported income or a substantial difference in reported income) that may arise later. The AHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the AHA will terminate the family's assistance in accordance with the policies in Chapter 12.

Recently Conducted Income Determinations
PHAs may accept income calculations and verifications from third-party providers or from an examination that the PHA conducted on behalf of the family for another subsidized housing program in lieu of conducting an initial examination of income as long as:

- The income was calculated in accordance with rules outlined at 24 CFR Part 5 and within the last six months; and
- The family certifies there has been no change in income or family composition in the interim.

AHA Policy
AHA will accept income calculations and verifications from third-party providers provided they meet the criteria outlined above.

The family certification must be made in a format acceptable to the AHA and must be signed by all adult family members whose information or status is being verified.

At the time of the family's annual reexamination the AHA must conduct the annual reexamination of income as outlined at 24 CFR 982.516 and PHA policies in Chapter 11.

EIV Income Validation
Once HUD makes the EIV data available to PHAs under this waiver and alternative requirement, the PHA must:

- Review the EIV Income and Income Validation Tool (IVT) reports to confirm and validate family-reported income within 90 days of the PIC submission date;
- Print and maintain copies of the EIV Income and IVT Reports in the tenant file; and
- Resolve any income discrepancy with the family within 60 days of the EIV Income or IVT Report dates.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Prior to admission, PHAs must continue to use HUD's EIV system to search for all household members using the Existing Tenant Search in accordance with PHA policies in Chapter 3.

If a PHA later determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program in accordance with Chapter 12.

19-IV.E. SOCIAL SECURITY NUMBER & CITIZENSHIP STATUS VERIFICATION

For the EHV program, the PHA is not required to obtain and verify SSN documentation and documentation evidencing eligible noncitizen status before admitting the family to the EHV program. Instead, PHAs may adopt policies to admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. As an alternative requirement, such individuals must provide the required documentation within 180 days of admission to be eligible for continued assistance, pending verification, unless the PHA provides an extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.

If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

AHA Policy
AHA will admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. These individuals must provide the required documentation in accordance with policies in Chapter 7 within 180 days of admission. The AHA may provide an additional 60-day extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.

If the AHA determines that an ineligible family received assistance, the AHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

19-IV.F. AGE & DISABILITY VERIFICATION

PHAs may accept self-certification of date of birth and disability status if a higher level of verification is not immediately available. If self-certification is used, the PHA must obtain a higher level of verification within 90 days of admission or verify the information in EIV.

If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

AHA Policy
AHA will accept self-certification of date of birth and disability status if a higher form of verification is not immediately available. The certification must be made in a format acceptable to the AHA and must be signed by the family member whose information or status is being verified. If self-certification is accepted, within 90 days of admission, the

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

AHA will verify the information in EIV or through other third-party verification if the information is not available in EIV. The AHA will note the family's file that self-certification was used as initial verification and include an EIV printout or other third-party verification confirming the applicant's date of birth and/or disability status.

If the AHA determines that an ineligible family received assistance, the AHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

19-IV.G. INCOME TARGETING

The PHA must determine income eligibility for EHV families in accordance with 24 CFR 982.201 and PHA policy in Chapter 3; however, income targeting requirements do not apply for EHV families. The PHA may still choose to include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

AHA Policy
The AHA will not include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

PART V: HOUSING SEARCH & LEASING

19-V.A. INITIAL VOUCHER TERM

Unlike the standard HCV program, which requires an initial voucher term of at least 60 days, EHV vouchers must have an initial search term of at least 120 days. PHA policies on extensions as outlined in Section 5-II.E. will apply.

AHA Policy
All EHVs will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the PHA grants an extension.

19-V.B. HOUSING SEARCH ASSISTANCE

The PHA must ensure housing search assistance is made available to EHV families during their initial housing search. The housing search assistance may be provided directly by the PHA or through the CoC or another partnering agency or entity.

At a minimum, housing search assistance must:

- Help individual families identify potentially available units during their housing search, including physically accessible units with features for family members with disabilities, as well as units in low-poverty neighborhoods;
- Provide transportation assistance and directions to potential units;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Conduct owner outreach;
- Assist with the completion of rental applications and PHA forms; and
- Help expedite the EHV leasing process for the family

AHA Policy
As identified in the MOU between the PHA and CoC, the following housing search assistance will be provided to each EHV family:

The AHA will:

Conduct owner outreach in accordance with policies in Chapter 13 provide directions to potential units as part of the EHV briefing packet expedite the EHV leasing process for the family to the extent practicable and in accordance with policies in this chapter at least every 30 days, conduct proactive check-ins via email and telephone with families who are searching with an EHV and remind them of their voucher expiration date partner with a local agency such as the Apartment Store to support EHV voucher families.

The CoC will:

Help identify agencies that a support families identify potentially available units during their housing search, including physically accessible units with features for family members with disabilities, as well as units in low-poverty neighborhoods identify transportation assistance to potential units assist the family with the completion of rental applications and AHA forms.

19-V.C. HQS PRE-INSPECTIONS

To expedite the leasing process, PHAs may pre-inspect available units that EHV families may be interested in leasing in order to maintain a pool of eligible units.

AHA Policy
To expedite the leasing process, the PHA may pre-inspect available units that EHV families may be interested in leasing to maintain a pool of eligible units. If an EHV family selects a unit that passed a HQS pre-inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval, the unit may be approved provided that it meets all other conditions under 24 CFR 982.305.

The family will be free to select his or her unit.

When a pre-inspected unit is not selected, the PHA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for any required reinspection.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

19-V.D. INITIAL LEASE TERM

Unlike in the standard the HCV program, EHV voucher holders may enter into an initial lease that is for less than 12 months, regardless of the PHA policy in Section 9-I.E., Term of Assisted Tenancy.

19-V.E. PORTABILITY

The normal HCV portability procedures and requirements outlined in Chapter 10 generally apply to EHVs. Exceptions are addressed below.

Nonresident Applicants
Under EHV, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied, regardless of PHA policy in Section 10-II.B.

Billing and Absorption
A receiving PHA cannot refuse to assist an incoming EHV family, regardless of whether the PHA administers EHVs under its own AC

- If the EHV family moves under portability to another PHA that administers EHVs under its own ACC:
  - The receiving PHA may only absorb the incoming EHV family with an EHV (assuming it has an EHV voucher available to do so).
  - If the PHA does not have an EHV available to absorb the family, it must bill the initial PHA. The receiving PHA must allow the family to lease the unit with EHV assistance and may not absorb the family with a regular HCV when the family leases the unit.
  - Regardless of whether the receiving PHA absorbs or bills the initial PHA for the family's EHV assistance, the EHV administration of the voucher is in accordance with the receiving PHA's EHV policies.
- If the EHV family moves under portability to another PHA that does not administer EHV under its own ACC, the receiving PHA may absorb the family into its regular HCV program or may bill the initial PHA.

Family Briefing
In addition to the applicable family briefing requirements at 24 CFR 982.301(a)(2) as to how portability works and how portability may affect the family's assistance, the initial PHA must inform the family how portability may impact the special EHV services and assistance that may be available to the family.

The initial PHA is required to help facilitate the family's portability move to the receiving PHA and inform the family of this requirement in writing, taking reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP).

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

AHA Policy
In addition to following AHA policy on briefings in Chapter 5, as part of the briefing packet for EHV families, the AHA will include a written notice that the AHA will assist the family with moves under portability.

For limited English proficient (LEP) applicants, the AHA will provide interpretation services in accordance with the AHA's LEP plan (See Chapter 2).

Coordination of Services
If the portability move is in connection with the EHV family's initial lease-up, the receiving PHA and the initial PHA must consult and coordinate on the EHV services and assistance that will be made available to the family.

AHA Policy
For EHV families who are exercising portability, when the AHA contacts the receiving PHA in accordance with Section 10-II.B. Preapproval Contact with Receiving PHA, the AHA will consult and coordinate with the receiving PHA to ensure there is no duplication of EHV services and assistance and ensure the receiving PHA is aware of the maximum amount of services fee funding that the initial PHA may provide to the receiving PHA on behalf of the family.

Services Fee
Standard portability billing arrangements apply for HAP and ongoing administrative fees for EHV families.

For service fees funding, the amount of the service fee provided by the initial PHA may not exceed the lesser of the actual cost of the services and assistance provided to the family by the receiving PHA or $1,750, unless the initial PHA and receiving PHA mutually agree to change the $1,750 cap. Service fees are paid as follows:

- If the receiving PHA, in consultation and coordination with the initial PHA, will provide eligible services or assistance to the incoming EHV family, the receiving PHA may be compensated for those costs by the initial PHA, regardless of whether the receiving PHA bills or absorbs.
- If the receiving PHA administers EHVs, the receiving PHA may use its own services fee and may be reimbursed by the initial PHA, or the initial PHA may provide the services funding upfront to the receiving PHA for those fees and assistance.
- If the receiving PHA does not administer EHVs, the initial PHA must provide the services funding upfront to the receiving PHA. Any amounts provided to the receiving PHA that are not used for services or assistance on behalf of the EHV family must promptly be returned by the receiving PHA to the initial PHA.

Placement Fee/Issuance Reporting Fee
If the portability lease-up qualifies for the placement fee/issuance reporting fee, the receiving PHA receives the full amount of the placement component of the placement fee/issuing reporting fee. The receiving PHA is eligible for the placement fee regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program at initial lease-up. The initial

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

PHA qualifies for the issuance reporting component of the placement fee/issuance reporting fee, as applicable.

19-V.F. PAYMENT STANDARDS

Payment Standard Schedule

For the EHV program, HUD has waived the regulation requiring a single payment standard for each unit size. Instead, the PHA may, but is not required to, establish separate higher payment standards for EHVs. Lower EHV payment standards are not permitted. If the PHA is increasing the regular HCV payment standard, the PHA must also increase the EHV payment standard if it would be otherwise lower than the new regular HCV payment standard. The separate EHV payment standard must comply with all other HCV requirements with the exception of the alternative requirements discussed below.

Further, if the PHA chooses to establish higher payments standards for EHVs, HUD has provided other regulatory waivers:

- Defining the "basic range" for payment standards as between 90 and 120 percent of the published Fair Market Rent (FMR) for the unit size (rather than 90 to 110 percent).
- Allowing a PHA that is not in a designated Small Area FMR (SAFMR) area or has not opted to voluntarily implement SAFMRs to establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published SAFMRs. The PHA may establish an exception payment standard up to 120 percent (as opposed to 110 percent) of the HUD published Small Area FMR for that ZIP code area. The exception payment standard must apply to the entire ZIP code area.
    - The PHA must notify HUD if it establishes an EHV exception payment standard based on the SAFMR.

AHA Policy

AHA will not establish a higher payment standard amount for EHVs. AHA will use the same payment standards for HCV and EHV.

Rent Reasonableness

All rent reasonableness requirements apply to EHV units, regardless of whether the PHA has established an alternative or exception EHV payment standard.

Increases in Payment Standards

The requirement that the PHA apply increased payment standards at the family's first regular recertification on or after the effective date of the increase does not apply to EHV. The PHA may, but is not required to, establish an alternative policy on when to apply the increased payment standard, provided the increased payment standard is used to calculate the HAP no later than the effective date of the family's first regular reexamination following the change.

AHA Policy

AHA will not establish an alternative policy for increases in the payment standard. AHA policy in Section 11-III.B. governing increases in payment standards will apply to EHV. HUD is waiving § 982.503(b)(1)(i) and establishing an alternative requirement to allow

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

the AHA to establish a payment standard amount for a unit size at any level between 90 percent and 120 percent (as opposed to 110 percent) of the published FMR for that unit size. HUD approval is not required to establish an EHV payment standard within that range. AHA will still request approval for exception EHV payment standards above 120% of the applicable FMR/SAFMR from HUD in accordance with § 982.503(b)(1)(iv) or § 982.503(c) if needed.

19-V.G. TERMINATION OF VOUCHERS

After September 30, 2023, a PHA may not reissue EHVs when assistance for an EHV-assisted family ends. This means that when an EHV participant (a family that is receiving rental assistance under a HAP contract) leaves the program for any reason, the PHA may not reissue that EHV to another family unless it does so no later than September 30, 2023.

If an applicant family that was issued the EHV is unsuccessful in finding a unit and the EHV expires after September 30, 2023, the EHV may not be reissued to another family.

All EHVs under lease on or after October 1, 2023, may not under any circumstances be reissued to another family when the participant leaves the program for any reason.

An EHV that has never been issued to a family may be initially issued and leased after September 30, 2023, since this prohibition only applies to EHVs that are being reissued upon turnover after assistance to a family has ended. However, HUD may direct PHAs administering EHVs to cease leasing any unleased EHVs if such action is determined necessary by HUD to ensure there will be sufficient funding available to continue to cover the HAP needs of currently assisted EHV families.

PART VI: USE OF FUNDS, REPORTING & FINANCIAL RECORDS

EHV funds allocated to the PHA for HAP (both funding for the initial allocation and HAP renewal funding) may only be used for eligible EHV HAP purposes. EHV HAP funding obligated to the PHA may not be used for EHV administrative expenses or the other EHV eligible expenses under this notice. Likewise, EHV administrative fees and funding obligated to the PHA are to be used for those purposes and must not be used for HAP.

The appropriated funds for EHVs are separate from the regular HCV program and may not be used for the regular HCV program but may only be expended for EHV eligible purposes. EHV HAP funds may not roll into the regular HCV restricted net position (RNP) and must be tracked and accounted for separately as EHV RNP. EHV administrative fees and funding for other eligible expenses permitted by Notice PIH 2021-15 may only be used in support of the EHVs and cannot be used for regular HCVs. EHV funding may not be used for the repayment of debts, or any amounts owed to HUD-by-HUD program participants including, but not limited to, those resulting from Office of Inspector General (OIG), Quality Assurance Division (QAD), or other monitoring review findings.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

The PHA must comply with EHV reporting requirements in the Voucher Management System (VMS) and Financial Data Schedule (FDS) as outlined in Notice PIH 2021-15.

The PHA must maintain complete and accurate accounts and other records for the program and provide HUD and the Comptroller General of the United States full and free access to all accounts and records that are pertinent the administration of the EHVs in accordance with the HCV program requirements at 24 CFR 982.158.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Chapter 20 SPECIAL PURPOSE VOUCHERS

INTRODUCTION

Special purpose vouchers are specifically funded by Congress in separate appropriations from regular HCV program funding in order to target specific populations. Special purpose vouchers include vouchers for the following programs:

- Veterans Affairs Supportive Housing (VASH)
- Mainstream
- Non-Elderly Disabled (NED)

AHA Policy
AHA will administer the following types of special purpose vouchers: Veterans Affairs Supportive Housing (VASH) Program, Mainstream Voucher Program, Non-Elderly Disabled (NED) voucher Program.

This chapter describes HUD regulations and PHA policies for administering special purpose vouchers. The policies outlined in this chapter are organized into five sections, as follows:

Part I: Veterans Affairs Supportive Housing (VASH)

Part II: Mainstream voucher program

Part III: Non-Elderly Disabled (NED) vouchers

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to special purpose vouchers.

PART I: VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM

20-I.A. OVERVIEW

Since 2008, HCV program funding has provided rental assistance under a supportive housing program for homeless veterans. The Veterans Affairs Supportive Housing (VASH) program combines HCV rental assistance with case management and clinical services provided by the Department of Veterans Affairs (VA) at VA medical centers (VAMCs) and Community-Based Outpatient Clinics (CBOCs). Eligible families are homeless veterans and their families that agree to participate in VA case management and are referred to the VAMC's partner PHA for HCV assistance. The VAMC or CBOC's responsibilities include:

- Screening homeless veterans to determine whether they meet VASH program participation criteria;
- Referring homeless veterans to the PHA;
    - The term *homeless veteran* means a veteran who is homeless (as that term is defined in subsection (a) or (b) of Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302)). See 38 U.S.C. 2002.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- Providing appropriate treatment and supportive services to potential VASH participants, if needed, prior to PHA issuance of a voucher;
- Providing housing search assistance to VASH participants;
- Identifying the social service and medical needs of VASH participants, and providing or ensuring the provision of regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout the veterans' participation period; and
- Maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

VASH vouchers are awarded noncompetitively based on geographic need and PHA administrative performance. Eligible PHAs must be located within the jurisdiction of a VAMC and in an area of high need based on data compiled by HUD and the VA. When Congress funds a new allocation of VASH vouchers, HUD invites eligible PHAs to apply for a specified number of vouchers.

Generally, the HUD-VASH program is administered in accordance with regular HCV program requirements. However, HUD is authorized to waive or specify alternative requirements to allow PHAs to effectively deliver and administer VASH assistance. Alternative requirements are established in the HUD-VASH Operating Requirements, which were originally published in the Federal Register on May 6, 2008, and updated March 23, 2012. Unless expressly waived by HUD, all regulatory requirements and HUD directives regarding the HCV program are applicable to VASH vouchers, including the use of all HUD-required contracts and other forms, and all civil rights and fair housing requirements. In addition, the PHA may request additional statutory or regulatory waivers that it determines are necessary for the effective delivery and administration of the program.

The VASH program is administered in accordance with applicable Fair Housing requirements since civil rights requirements cannot be waived under the program. These include applicable authorities under 24 CFR 5.105(a) and 24 CFR 982.53 including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination Act and all PHA policies as outlined in Chapter 2 of this document.

When HUD-VASH recipients include veterans with disabilities or family members with disabilities, reasonable accommodation requirements in Part II of Chapter 2 of this policy apply.

20-I.B. REFERRALS

[FR Notice 3/23/12 and HUD-VASH Qs and As]
VAMC case managers will screen all families in accordance with VA screening criteria and refer eligible families to the PHA for determination of program eligibility and voucher issuance. The PHA has no role in determining or verifying the veteran's eligibility under VA screening criteria, including determining the veteran's homelessness status. The PHA must accept referrals from the partnering VAMC and must maintain written documentation of referrals in VASH tenant

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

files. Upon turnover, VASH vouchers must be issued to eligible veteran families as identified by the VAMC.

AHA Policy
In order to expedite the screening process, AHA will provide all forms and a list of documents required for the VASH application to the VAMC. Case managers will work with veterans to fill out the forms and compile all documents prior to meeting with the PHA and submitting an application. When feasible, the VAMC case manager should email or fax copies of all documents to AHA prior to the meeting in order to allow AHA time to review them and start a file for the veteran.

After the VAMC has given AHA a complete referral, AHA will perform an eligibility screening within five business days of receipt of a VAMC referral.

20-I.C. HCV PROGRAM ELIGIBILITY

[FR Notice 3/23/12]
Eligible participants are homeless veterans and their families who agree to participate in case management from the VAMC.

- A *VASH Veteran* or *veteran family* refers to either a single veteran or a veteran with a household composed of two or more related persons. It also includes one or more eligible persons living with the veteran who are determined to be important to the veteran's care or well-being.
- A veteran for the purpose of VASH is a person whose length of service meets statutory requirements, and who served in the active military, naval, or air service, was discharged or released under conditions other than dishonorable, and is eligible for VA health care.

Under VASH, PHAs do not have authority to determine family eligibility in accordance with HCV program rules and PHA policies. The only reasons for denial of assistance by the PHA are failure to meet the income eligibility requirements and/or that a family member is subject to a lifetime registration requirement under a state sex offender registration program. Under portability, the receiving PHA must also comply with these VASH screening requirements.

Social Security Numbers
When verifying Social Security numbers (SSNs) for homeless veterans and their family members, an original document issued by a federal or state government agency, which contains the name and SSN of the individual along with other identifying information of the individual, is acceptable in accordance with Section 7-II.B. of this policy.

In the case of the homeless veteran, the PHA must accept the Certificate of Release or Discharge from Active Duty (DD-214) or the VA-verified Application for Health Benefits (10-10EZ) as verification of SSN and cannot require the veteran to provide a Social Security card. A VA-issued identification card may also be used to verify the SSN of a homeless veteran.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Proof of Age
The DD-214 or 10-10EZ must be accepted as proof of age in lieu of birth certificates or other PHA-required documentation as outlined in Section 7-II.C. of this policy. A VA-issued identification card may also be used to verify the age of a homeless veteran.

Photo Identification
A VA-issued identification card must be accepted in lieu of another type of government-issued photo identification.

Income Eligibility
The PHA must determine income eligibility for VASH families in accordance with 24 CFR 982.201 and policies in Section 3-II.A. If the family is over-income based on the most recently published income limits for the family size, the family will be ineligible for HCV assistance.

While income-targeting does not apply to VASH vouchers, the PHA may include the admission of extremely low-income VASH families in its income targeting numbers for the fiscal year in which these families are admitted.

> **AHA Policy**
> While income-targeting requirements will not be considered by AHA when families are referred by the partnering VAMC, AHA will include any extremely low-income VASH families that are admitted in its income targeting numbers for the fiscal year in which these families are admitted.

Screening
The PHA may not screen any potentially eligible family members or deny assistance for any grounds permitted under 24 CFR 982.552 and 982.553 with one exception: the PHAs is still required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. Accordingly, with the exception of denial for registration as a lifetime sex offender under state law and PHA policies on how sex offender screenings will be conducted, PHA policy in Sections 3-III.B. through 3-III.E. do not apply to VASH. The prohibition against screening families for anything other than lifetime sex offender status applies to all family members, not just the veteran.

Denial of Assistance [Notice PIH 2008-37]
Once a veteran is referred by the VAMC, the PHA must either issue a voucher or deny assistance. If the PHA denies assistance, it must provide the family with prompt notice of the decision and a brief statement of the reason for denial in accordance with Section 3-III.F. Like in the standard HCV program, the family must be provided with the opportunity for an informal review in accordance with policies in Section 3-III.F. In addition, a copy of the denial notice must be sent to the VAMC case manager.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

20-I.D. CHANGES IN FAMILY COMPOSITION

Adding Family Members [FR Notice 3/23/12]
When adding a family member after the family has been admitted to the program, PHA policies in Section 3-II.B. apply. Other than the birth, adoption, or court-awarded custody of a child, the PHA must approve additional family members and will apply its regular screening criteria in doing so.

Remaining Family Members [HUD-VASH Qs and As]
If the homeless veteran dies while the family is being assisted, the voucher will remain with the remaining members of the tenant family. The PHA may use one of its own regular vouchers, if available, to continue assisting this family and free up a VASH voucher for another VASH-eligible family. If a regular voucher is not available, the family would continue utilizing the VASH voucher. Once the VASH voucher turns over, however, it must go to a homeless veteran family.

Family Break Up [HUD-VASH Qs and As]
In the case of divorce or separation, since the set-aside of VASH vouchers is for veterans, the voucher must remain with the veteran. This overrides the PHA's policies in Section 3-I.C. on how to determine who remains in the program if a family breaks up.

20-I.E. LEASING

[FR Notice 3/23/12]
Waiting List
The PHA does not have the authority to maintain a waiting list or apply local preferences for HUD–VASH vouchers. Policies in Chapter 4 relating to applicant selection from the waiting list, local preferences, special admissions, cross-listing, and opening and closing the waiting list do not apply to VASH vouchers.

Voucher Issuance
Unlike the standard HCV program which requires an initial voucher term of at least 60 days, VASH vouchers must have an initial search term of at least 120 days. PHA policies on extensions as outlined in Section 5-II.E. will apply.

> **AHA Policy**
> All VASH vouchers will have an initial term of 120 calendar days.
>
> The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the PHA grants an extension.

The PHA must track issuance of HCVs for families referred by the VAMC or CBOC in PIC as required in Notice PIH 2011-53.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Initial Lease Term
Unlike in the standard the HCV program, VASH voucher holders may enter into an initial lease that is for less than 12 months. Accordingly, PHA policy in Section 9-I.E., Term of Assisted Tenancy, does not apply.

Ineligible Housing [FR Notice 6/18/14]
Unlike in the standard HCV program, VASH families are permitted to live on the grounds of a VA facility in units developed to house homeless veterans. Therefore, 24 CFR 982.352(a)(5) and 983.53(a)(2), which prohibit units on the physical grounds of a medical, mental, or similar public or private institution, do not apply to VASH for this purpose only. Accordingly, PHA policy in 9-I.D., Ineligible Units, does not apply for this purpose only.

HQS Pre-Inspections
To expedite the leasing process, PHAs may pre-inspect available units that veterans may be interested in leasing in order to maintain a pool of eligible units. If a VASH family selects a unit that passed an HQS inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval (Form HUD-52517), the unit may be approved if it meets all other conditions under 24 CFR 982.305. However, the veteran must be free to select his or her unit and cannot be steered to these units.

AHA Policy
To expedite the leasing process, AHA may pre-inspect available units that veterans may be interested in leasing to maintain a pool of eligible units. If a VASH family selects a unit that passed a HQS pre-inspection (without intervening occupancy) within 45 days of the date of the RTA, the unit may be approved provided that it meets all other conditions under 24 CFR 982.305. The veteran will be free to select his or her unit.

When a pre-inspected unit is not selected, AHA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for both initial and any required reinspections.

20-I.F. PORTABILITY

[FR Notice 3/23/12 and Notice PIH 2011-53]
General Requirements
Portability policies under VASH depend on whether the family wants to move within or outside of the initial VA facility's catchment area (the area in which the VAMC or CBOC operates). In all cases, the initial VA facility must be consulted prior to the move and provide written confirmation that case management will continue to be provided in the family's new location. VASH participant families may only reside in jurisdictions that are accessible to case management services, as determined by case managers at the partnering VAMC or CBOC.

Under VASH, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied. As a result, PHA policies in Section 10-II.B. about nonresident applicants do not apply.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

If the family no longer requires case management, there are no portability restrictions. Normal portability rules apply.

Portability within the Initial VAMC's Catchment Area
A VASH family can move within the VAMC's catchment area as long as case management can still be provided, as determined by the VA. If the initial PHA's partnering VAMC will still provide the case management services, the receiving PHA must process the move in accordance with portability procedures:

- If the receiving PHA has been awarded VASH vouchers, it can choose to either bill the initial PHA or absorb the family if it has a VASH voucher available to do so.
- If the PHA absorbs the family, the VAMC or CBOC providing the initial case management must agree to the absorption and the transfer of case management.
- If the receiving PHA does not administer a VASH program, it must always bill the initial PHA.

Portability Outside of the Initial VAMC's Catchment Area
If a family wants to move to another jurisdiction where it will not be possible for the initial PHA's partnering VAMC or CBOC to provide case management services, the initial VAMC must first confirm that the new VAMC has an available VASH case management slot and the new VAMC's partner PHA has an available VASH voucher.

After acceptance of the veteran by the new VAMC, the new VAMC will refer the veteran to its partner PHA. In these cases, the family must be absorbed by the receiving PHA either as a new admission or as a portability move-in, as applicable. Upon absorption, the initial PHA's VASH voucher will be available to lease to a new VASH-eligible family, and the absorbed family will count toward the number of VASH slots awarded to the receiving PHA.

20-I.G. TERMINATION OF ASSISTANCE

[FR Notice 3/23/12]
With the exception of terminations for failure to receive case management, HUD has not established any alternative requirements for termination of assistance for VASH participants. However, prior to terminating VASH participants, HUD strongly encourages PHAs to exercise their discretion under 24 CFR 982.552(c)(2) as outlined in Section 12-II.D. of this policy and consider all relevant circumstances of the specific case. This includes granting reasonable accommodations for persons with disabilities, as well as considering the role of the case manager and the impact that ongoing case management services can have on mitigating the conditions that led to the potential termination.

VASH participant families may not be terminated after admission for a circumstance or activities that occurred prior to admission and were known to the PHA but could not be considered at the time of admission due to VASH program requirements. The PHA may terminate the family's assistance only for program violations that occur after the family's admission to the program.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Cessation of Case Management
As a condition of receiving HCV rental assistance, a HUD-VASH-eligible family must receive case management services from the VAMC or CBOC. A VASH participant family's assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC or CBOC.

However, a VAMC or CBOC determination that the participant family no longer requires case management is not grounds for termination of assistance and the family is still eligible for assistance under the HCV program. In such a case, at its option, the PHA may offer the family continued HCV assistance through one of its regular vouchers. If the PHA has no voucher to offer, the family will retain its VASH voucher until such time as the PHA has an available voucher for the family.

VAWA [HUD VASH Qs and As and Notice PIH 2017-08]
When a veteran's family member is receiving protection under VAWA because the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon termination of the perpetrator's VASH assistance, the victim should be given a regular HCV if one is available, and the perpetrator's VASH voucher should be used to serve another eligible veteran family. If a regular HCV is not available, the victim will continue to use the VASH voucher even after the perpetrator's assistance is terminated.

20-I.H. PROJECT-BASING VASH VOUCHERS

General Requirements [Notice PIH 2017-21]
The PHA may administer project-based VASH vouchers under two circumstances. First, PHAs are authorized to project-base their tenant-based VASH vouchers without additional HUD review or approval in accordance with Notice PIH 2017-21 and all PBV program requirements provided that the VAMC will continue to make supportive services available. Second, since 2010, HUD has awarded VASH vouchers specifically for project-based assistance in the form of PBV HUD-VASH set-aside vouchers. While these vouchers are excluded from the PBV program cap as long as they remain under PBV HAP contract at the designated project, all other VASH vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A.

If the PHA project-bases VASH vouchers, the PHA must retain documentation of the partnering VAMC's support. Policies for VASH PBV units will generally follow PHA policies for the standard PBV program as listed in Chapter 17, with the exception of the moves policy listed below.

Moves [HUD-VASH Qs and As]
When a VASH PBV family is eligible to move from its PBV unit in accordance with Section 17-VIII.C. of this policy, but there is no other comparable tenant-based rental assistance, the following procedures must be implemented:

- If a VASH tenant-based voucher is not available at the time the family wants (and is eligible) to move, the PHA may require the family to wait for a VASH tenant-based voucher for a period not to exceed 180 days;

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

- If a VASH tenant-based voucher is still not available after that period, the family must be allowed to move with its VASH voucher, and the PHA is required to replace the assistance in the PBV unit with one of its regular vouchers, unless the PHA and owner agree to remove the unit from the HAP contract; and
- If after 180 days, a VASH tenant-based voucher does not become available and the PHA does not have sufficient available funding in its HCV program to attach assistance to the PBV unit, the family may be required to remain in its PBV unit until such funding becomes available. In determining if funding is insufficient, the PHA must take into consideration its available budget authority, which also includes unspent prior year HAP funds in the PHA's Net Restricted Assets account.

PART II: MAINSTREAM VOUCHER PROGRAM

20-II.A. PROGRAM OVERVIEW

[Notice PIH 2020-01]
Mainstream vouchers assist non-elderly persons with disabilities and their families in the form of either project-based or tenant-based voucher assistance.

Aside from separate funding appropriations and serving a specific population, Mainstream vouchers follow the same program requirements as standard vouchers. The PHA does not have special authority to treat families that receive a Mainstream voucher differently from other applicants and participants. For example, the PHA cannot apply different payment standards, establish conditions for allowing portability, or apply different screening criteria to Mainstream families.

The Mainstream voucher program, (previously referred to as the Mainstream 5-Year program or the Section 811 voucher program) was originally authorized under the National Affordable Housing Act of 1990. Mainstream vouchers operated separately from the regular HCV program until the passage of the Frank Melville Supportive Housing Investment Act of 2010. Funding for Mainstream voucher renewals and administrative fees was first made available in 2012. In 2017 and 2019, incremental vouchers were made available for the first time since the Melville Act (in addition to renewals and administrative fees), and PHAs were invited to apply for a competitive award of Mainstream vouchers under the FY17 and FY19 NOFAs. In 2020, Notice PIH 2020-22 provided an opportunity for any PHA administering an HCV program to apply for Mainstream vouchers noncompetitively, while Notice PIH 2020-09 authorized an increase in Mainstream voucher units and budget authority for those PHAs already awarded Mainstream vouchers under the FY17 and FY19 NOFAs.

Funds for Mainstream vouchers may be recaptured and reallocated if the PHA does not comply with all program requirements or fails to maintain a utilization rate of 80 percent for the PHA's Mainstream vouchers.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

20-II.B. ELIGIBLE POPULATION

[Notice PIH 2020-01 and Notice PIH 2020-22]
All Mainstream vouchers must be used to serve non-elderly persons with disabilities and their families, defined as any family that includes a person with disabilities who is at least 18 years old and not yet 62 years old as of the effective date of the initial HAP contract. The eligible disabled household member does not need to be the head of household.

The definition of person with disabilities for purposes of Mainstream vouchers is the statutory definition under section 3(b)(3)(E) of the 1937 Act, which is the same as is used for allowances and deductions in the HCV program and is provided in Exhibit 3-1 of this policy.

Existing families receiving Mainstream vouchers, where the eligible family member is now age 62 or older, will not "age out" of the program as long as the family was eligible on the day it was first assisted under a HAP contract.

The PHA may not implement eligibility screening criteria for Mainstream vouchers that is different from that of the regular HCV program.

20-II.C. PARTNERSHIP AND SUPPORTIVE SERVICES

[Notice PIH 2020-01]
PHAs are encouraged but not required to establish formal and informal partnerships with a variety of organizations that assist persons with disabilities to help ensure eligible participants find and maintain stable housing.

AHA Policy
The PHA has not partnered with any other groups in the operation of its Mainstream program.

20-II.D. WAITING LIST ADMINISTRATION

General Waiting List Requirements [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20]

PHAs must not have a separate waiting list for Mainstream voucher assistance since the PHA is required by the regulations to maintain one waiting list for tenant-based assistance [24 CFR 982.204(f)]. All PHA policies on opening, closing, and updating the waiting list, as well as waiting list preferences in Chapter 4, apply to the Mainstream program.

When the PHA is awarded Mainstream vouchers, these vouchers must be used for new admissions to the PHA's program from the waiting list. The PHA must lease these vouchers by pulling the first Mainstream-eligible family from its tenant-based waiting list. PHAs are not permitted to reassign existing participants to the program in order to make regular tenant-based vouchers available. Further, the PHA may not skip over Mainstream-eligible families on the waiting list because the PHA is serving the required number of Mainstream families.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Upon turnover, vouchers must be provided to Mainstream-eligible families. If a Mainstream turnover voucher becomes available, the PHA must determine if the families at the top of the waiting list qualify under program requirements.

20-II.E. PORTABILITY

[Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20]
Mainstream voucher participants are eligible for portability under standard portability rules and all PHA policies regarding portability in Chapter 10, Part II apply to Mainstream families.

The following special considerations for Mainstream vouchers apply under portability:

- If the receiving PHA has a Mainstream voucher available, the participant may remain a Mainstream participant.
- If the receiving PHA chooses to bill the initial PHA, then the voucher will remain a Mainstream voucher.
- If the receiving PHA chooses to absorb the voucher, the voucher will be considered a regular voucher, or a Mainstream voucher if the receiving PHA has a Mainstream voucher available, and the Mainstream voucher at the initial PHA will be freed up to lease to another Mainstream-eligible family.
- If the receiving PHA does not have a Mainstream voucher available, the participant may receive a regular voucher.

20-II.F. PROJECT-BASING MAINSTREAM VOUCHERS

[FY19 Mainstream Voucher NOFA Q&A]
The PHA may project-base Mainstream vouchers in accordance with all applicable PBV regulations and PHA policies in Chapter 17. PHAs are responsible for ensuring that, in addition to complying with project-based voucher program requirements, the project complies with all applicable federal nondiscrimination and civil rights statutes and requirements. This includes, but is not limited to, Section 504 of the Rehabilitation Act (Section 504), Titles II or III of the Americans with Disabilities (ADA), and the Fair Housing Act and their implementing regulations at 24 CFR Part 8; 28 CFR Parts 35 and 36; and 24 CFR Part 100. Mainstream vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A.

PART III: NON-ELDERLY DISABLED (NED) VOUCHERS

20-III.A. PROGRAM OVERVIEW

[Notice PIH 2013-19]
NED vouchers help non-elderly disabled families lease suitable, accessible, and affordable housing in the private market. Aside from separate funding appropriations and serving a specific population, NED vouchers follow the same program requirements as standard vouchers. The PHA does not have special authority to treat families that receive a NED voucher differently from other applicants and participants.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Some NED vouchers are awarded to PHAs through competitive NOFAs. The NOFA for FY2009 Rental Assistance for NED made incremental funding available for two categories of NED families:

- **Category 1** vouchers enable non-elderly persons or families with disabilities to access affordable housing on the private market.
- **Category 2** vouchers enable non-elderly persons with disabilities currently residing in nursing homes or other healthcare institutions to transition into the community. PHAs with NED Category 2 vouchers were required to partner with a state Medicaid or health agency or the state Money Follows the Person (MFP) Demonstration agency.

  Since 1997, HCVs for NED families have been also awarded under various special purpose HCV programs: Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (Designated Housing), Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments (Certain Developments), One-Year Mainstream Housing Opportunities for Persons with Disabilities, and the Project Access Pilot Program (formerly Access Housing 2000).

- **Designated Housing** vouchers enable non-elderly disabled families, who would have been eligible for a public housing unit if occupancy of the unit or entire project had not been restricted to elderly families only through an approved Designated Housing Plan, to receive rental assistance. These vouchers may also assist non-elderly disabled families living in a designated unit/project/building to move from that project if they so choose. The family does not have to be listed on the PHA's voucher waiting list. Instead, they may be admitted to the program as a special admission. Once the impacted families have been served, the PHA may begin issuing these vouchers to non-elderly disabled families from their HCV waiting list. Upon turnover, these vouchers must be issued to non-elderly disabled families from the PHA's HCV waiting list.

- **Certain Developments** vouchers enable non-elderly families having a person with disabilities, who do not currently receive housing assistance in certain developments where owners establish preferences for, or restrict occupancy to, elderly families, to obtain affordable housing. These non-elderly families with a disabled person do not need to be listed on the PHA's HCV waiting list in order to be offered and receive housing choice voucher rental assistance. It is sufficient that these families' names are on the waiting list for a covered development at the time their names are provided to the PHA by the owner. Once the impacted families have been served, the PHA may begin issuing these vouchers to non-elderly disabled families from their HCV waiting list. Upon turnover, these vouchers must be issued to non-elderly disabled families from the PHA's HCV waiting list.

  - **One-Year Mainstream Housing Opportunities for Persons with Disabilities (One-Year Mainstream) vouchers** enable non-elderly disabled families on the PHA's waiting list to receive a voucher. After initial leasing, turnover vouchers must be issued to non-elderly disabled families from the PHA's voucher waiting list.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

20-III.B. ELIGIBLE POPULATION

General Requirements [Notice PIH 2013-19]
Only eligible families whose head of household, spouse, or cohead is non-elderly (under age 62) and disabled may receive a NED voucher. Families with only a minor child with a disability are not eligible.

In cases where the qualifying household member now qualifies as elderly due to the passage of time since the family received the NED voucher, existing NED participant families do not "age out," as the family was eligible on the day it was first assisted under a housing assistance payments (HAP) contract.

The definition of person with disabilities for purposes of NED vouchers is the statutory definition under Section 3(b)(3)(E) of the 1937 Act, which is the same as is used for allowances and deductions in the HCV program and is provided in Exhibit 3-1 of this policy.

The PHA may not implement eligibility screening criteria for NED vouchers that is different from that of the regular HCV program.

NED Category 2 [Notice PIH 2013-19 and NED Category 2 FAQs]
In addition to being eligible for the PHA's regular HCV program and a non-elderly person with a disability, in order to receive a Category 2 voucher, the family's head, spouse, cohead, or sole member must be transitioning from a nursing home or other healthcare institution and provided services needed to live independently in the community.

Nursing homes or other healthcare institutions may include intermediate care facilities and specialized institutions that care for those with intellectual disabilities, developmentally disabled, or mentally ill, but do not include board and care facilities (e.g., adult homes, adult day care, adult congregate living).

The PHA cannot limit who can apply to just those persons referred or approved by a Money Follows the Person (MFP) Demonstration agency or state health agency. Other individuals could be placed on the waiting list if they can show, with confirmation by an independent agency or organization that routinely provides such services (this can be the MFP or partnering agency, but need not be), that the transitioning individual will be provided with all necessary services, including care or case management.

For each Category 2 family, there must be documentation (e.g., a copy of a referral letter from the partnering or referring agency) in the tenant file identifying the institution where the family lived at the time of voucher issuance.

20-III.C. WAITING LIST

General Requirements [Notice PIH 2013-19]
Families must be selected for NED vouchers from the PHA's waiting list in accordance with all applicable regulations and PHA policies in Chapter 4.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

Regardless of the number of NED families the PHA is required to serve, the next family on the waiting list must be served. Further, the PHA may not skip over NED-eligible families on the waiting list because the PHA is serving the required number of NED families.

NED Category 2 Referrals [NED Category 2 FAQs]
For NED Category 2 families, the partnering agency may make referrals of eligible families to the PHA for placement on the waiting list. The PHA will then select these families from the waiting list for voucher issuance. Because language in the NOFA established that vouchers awarded under the NOFA must only serve non-elderly disabled families transitioning from institutions, the PHA does not need to establish a preference in order to serve these families ahead of other families on the PHA's waiting list.

PHAs must accept applications from people living outside their jurisdictions or from people being referred from other Medicaid or MFP service agencies in their state.

If the PHA's waiting list is closed, the PHA must reopen its waiting list to accept referrals from its partnering agency. When opening the waiting list, PHAs must advertise in accordance with 24 CFR 982.206 and PHA policies in Section 4-II.C. In addition, the PHA must ensure that individuals living in eligible institutions are aware when the PHA opens its waiting list by reaching out to social service agencies, nursing homes, intermediate care facilities and specialized institutions in the local service area.

Reissuance of Turnover Vouchers [Notice PIH 2013-19]
All NED turnover vouchers must be reissued to the next NED family on the PHA's waiting list with the following exception: A Category 2 voucher must be issued to another Category 2 family upon turnover if a Category 2 family is on the PHA's waiting list. If there are no Category 2 families on the PHA's waiting list, the PHA must contact its partnering agency as well as conduct outreach through appropriate social service agencies and qualifying institutions to identify potentially eligible individuals. Only after all means of outreach have been taken to reach Category 2 families can the PHA reissue the voucher to another Category 2 NED family on the PHA's waiting list. Any subsequent turnover of that voucher must again be used for a Category 2 family on the PHA's waiting list, and the PHA is under the same obligation to conduct outreach to Category 2 families if no such families are on the PHA's waiting list.

For PHAs that received both Category 1 and Category 2 vouchers, if at any time the PHA is serving fewer Category 2 families than the number of Category 2 HCVs awarded under the NOFA, when a Category 2 family applies to the waiting list and is found eligible, the PHA must issue the next NED voucher to that family. HUD monitors the initial leasing and reissuance of Category 2 HCVs. These vouchers may be recaptured and reassigned if not leased properly and in a timely manner.

All NED vouchers should be affirmatively marketed to a diverse population of NED-eligible families to attract protected classes least likely to apply. If at any time following the turnover of a NED HCV a PHA believes it is not practicable to assist NED families, the PHA must contact HUD.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.

20-III.D. LEASE UP

[Notice PIH 2013-19]
Briefings
In addition to providing families with a disabled person a list of accessible units known to the PHA, HUD encourages, but does not require, PHAs to provide additional resources to NED families as part of the briefing.

AHA Policy
In addition to providing families with a disabled person a list of accessible units known to AHA, AHA will provide a list of local supportive service and disability organizations that may provide such assistance as counseling services and funding for moving expenses or security deposits in the briefing packet. These organizations include state protection and advocacy agencies, Centers for Independent Living, state Medicaid agencies, and disability advocacy groups that represent individuals with a variety of disabilities.

Further, if other governmental or non-governmental agencies provide available resources such as housing search counseling, moving expenses, security deposits, and utility deposits, AHA will include this information in the briefing packet.

AHA will also offer specialized housing search assistance to families with a disabled person to locate accessible units if requested. Trained AHA staff or a local supportive service or disability organization may be able to provide this service.

Voucher Term
While the PHA is not required to establish different policies for the initial term of the voucher for NED vouchers, HUD has encouraged PHAs with NED vouchers to be generous in establishing reasonable initial search terms and subsequent extensions for families with a disabled person.

AHA Policy
All NED vouchers will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the PHA grants an extension.

All other AHA policies on extensions and suspension of vouchers in Section 5-II.E. will apply.

Special Housing Types [Notice PIH 2013-19 and NED Category 2 FAQs]
In general, a PHA is not required to permit families to use any of the special housing types and may limit the number of families using such housing. However, the PHA must permit the use of a special housing type if doing so provides a reasonable accommodation so that the program is readily accessible to and usable by a person with disabilities.

© Copyright 2021 Nan McKay & Associates, Inc. Unlimited copies may be made for internal use.

Such special housing types include single room occupancy housing, congregate housing, group homes, shared housing, cooperative housing, and manufactured homes when the family owns the home and leases the manufactured home space.

Persons with disabilities transitioning out of institutional settings may choose housing in the community that is in a group or shared environment or where some additional assistance for daily living is provided for them on site. Under HUD regulations, group homes and shared housing are considered special housing types and are not excluded as an eligible housing type in the HCV program. Assisted living facilities are also considered eligible housing under the normal HCV program rules, as long as the costs for meals and other supportive services are not included in the housing assistance payments (HAP) made by the PHA to the owner, and as long as the person does not need continual medical or nursing care.

20-III.E. PORTABILITY

[NED Category 2 FAQs]
NED voucher participants are eligible for portability under standard portability rules and all PHA policies regarding portability in Chapter 10, Part II apply to NED families. However, the PHA may, but is not required to, allow applicant NED families to move under portability, even if the family did not have legal residency in the initial PHA's jurisdiction when they applied.

AHA Policy
If neither the head of household nor the spouse or cohead of a NED applicant family had a domicile (legal residence) in AHA's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial AHA's jurisdiction for at least 12 months before requesting portability.

AHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, or stalking.

© Copyright 2021 Nan McKay & Associates, Inc.
Unlimited copies may be made for internal use.